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July 30th / 1889

PRIDEAUX'S
PRECEDENTS
IN
CONVEYANCING;
WITH
Dissertations
ON ITS
LAW AND PRACTICE.

FOURTEENTH EDITION.

BY
FREDERICK PRIDEAUX,
LATE PROFESSOR OF THE LAW OF REAL AND PERSONAL PROPERTY TO THE INNS OF COURT,
AND
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VOL. I.

LONDON:
STEVENS AND SONS, LIMITED,
Law Publishers and Booksellers,
119, CHANCERY LANE,
1889

LONDON:

PRINTED BY C. F. BOWORTH, GREAT NEW STREET, FETTER LANE—E.C.

PREFACE.

THE necessity for issuing a fourteenth edition of this work gives the editors satisfactory assurance that its usefulness continues to be recognized by the profession. It has been their aim to make each successive edition an improvement on its predecessors, not only by a careful revision of the text throughout, with reference to new Acts of Parliament and new judicial decisions, but also by the expansion from time to time of the Dissertations, and the addition of new Precedents.

In the present edition the Dissertation on "Searches" has been to a great extent re-written, and in the Dissertation on "Purchase Deeds" some of the subjects, especially that of covenants running with the land and restrictive covenants, are more fully considered. The Precedents of Purchase Deeds are followed under the same heading by miscellaneous instruments connected with sales, and in like manner the Precedents of Mortgages, Leases, and Settlements are accompanied by other instruments connected with these transactions.

Some additions to, and alterations in the arrangement of the Precedents of "Wills" will be noticed.

The interpretation placed by the Court of Appeal and the House of Lords in recent cases on section 9 of the Bills of Sale Act, 1882, has necessitated a very careful

revision of the Dissertation on this subject, and also the omission of several forms of Bills of Sale which were inserted in former editions.

Two new Dissertations have been added, the one on "Arrangements with Creditors," and the other on "Charity Deeds," each being followed by several appropriate Precedents.

The Statutes which have passed since the publication of the last edition—of which the most important are: The Mortmain and Charitable Uses Act, 1888; The Trustee Act, 1888; The Land Charges Registration and Searches Act, 1888; The Customs and Inland Revenue Act, 1888; The Copyhold Act, 1887; and The Law of Distress Amendment Act, 1888,—are referred to in their proper places, and the New Rules issued under the Land Charges, &c. Act are added to the Appendix.

F. P.

J. W.

January, 1889.

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CONDITIONS OF SALE.

UPON a sale by auction, the property which is the subject of the sale is usually described in printed particulars, to which are annexed conditions specifying the terms and stipulations subject to which the sale is to be made.

Particulars
and conditions.

Conditions of sale may be conveniently considered under the following heads:—I. Conditions relating to title and evidence of title, and, as incidental thereto, the mutual obligations of vendor and purchaser in this respect in the absence of stipulation. II. Conditions relating to the completion of the purchase. III. Conditions relating to misdescriptions in the particulars, and compensation in respect thereof. IV. Conditions relating to other matters, and Conditions generally.

Division of the
subject of
conditions.

I. Conditions relating to title and evidence of title, and the mutual obligations of vendor and purchaser in this respect in the absence of stipulation.

(A) Generally.

When a person offers an estate for sale without qualification, he impliedly asserts that it is his to sell, and that he has a good title. He is therefore bound, in the absence of stipulation, to deduce and verify his title for a period of at least forty years preceding the day of sale (*a*). This obligation involves the delivery

The obligations of a vendor as to proving his title in the absence of stipulation.

(*a*) By the statute 37 & 38 Vict. c. 78, s. 1, forty years is substituted for sixty years, which was the old rule, and which was calculated with reference to the probable duration of human life, it being considered that sixty years was the shortest period at the end of which it could be fairly presumed that property represented or supposed to be held

in fee simple might not in fact be held for a life or lives still existing. See *Else v. Else*, L. R. 13 Eq. 196, where the production of a will, dated nearly fifty years prior to the day of sale, revealed the fact that the vendor's estate was determinable on the death, without issue, of a person still living and childless.

Forty years substituted for sixty years as root of title.

Production of deeds.
Identification of parcels.

Proof of facts.

Expense of evidence not in vendor's possession.

Place where documents should be produced, and expense of journeys to examine them.

Purchaser's rights in respect of the vendor's title should be restricted by conditions, if necessary.

to the purchaser of an abstract of title extending over the above period; the production of all deeds and documents stated in the abstract; the identification of the property as described in the Particulars with the property described in the several documents of title, and the strict proof, by certificates, declarations, or otherwise, of all births, marriages, deaths, heirships, and other matters and facts forming a link in the chain of title, unless such facts are recited or stated in documents twenty years old, in which case the recital or statement is, under the rules enacted by the Vendor and Purchaser Act, 1874 (*b*), made sufficient evidence. But on all sales made after the 31st December, 1881, the expense of the production of documents and of procuring evidence (*c*) not in the vendor's possession, and of all copies or abstracts of or extracts from such documents, for verification of the abstract or for any other purpose, must be borne by the purchaser requiring them (*d*). Documents in the vendor's possession should be produced at his own residence, or at the office of his solicitor, or of his solicitor's London agent, but as regards documents in the possession of other persons, the purchaser must pay for the journeys of his solicitor to examine them (*d*).

If the state of a vendor's title makes it unsafe for him to proceed to a sale under the full obligation above mentioned, he should sell under conditions restricting the legal rights of the purchaser. The extent to which this ought to be done depends on the particular circumstances of each title, and in preparing conditions, the vendor's solicitor should bear in

Meaning of the word "evidence" in Conveyancing Act, 1881, sect. 3.

*Meaning of the word "abstract" in Act.

(*b*) Sect. 2, rule 2.

(*c*) The evidence here mentioned is not that which forms part of the title. Accordingly, on the purchase of a lease, which contained a covenant by the lessee that he would finish the house fit for habitation to the satisfaction of the lessor's surveyor, it was held that the expense of the certificate of the lessor's surveyor, that it had been completed to his satisfaction, must be borne by the

vendor. *In re Moody and Yates'* Contract, 30 C. D. 344.

*(*d*) Conveyancing Act, 1881, s. 3, sub-s. 6. This sub-section does not relieve the vendor from the obligation of furnishing in the first instance, at his own expense, an abstract of all documents forming his title, whether in his possession or not. *In re Johnson and Tustin*, 30 C. D. 42.

mind—first, that it is his duty to protect his client from being subjected to troublesome inquiries which may be guarded against by reasonable conditions; and, secondly, that to insert very stringent conditions may have the effect of damping a sale and deterring purchasers, although as a matter of experience this is seldom the case.

When the vendor has in his possession or power a deed of about forty years old, which will form a good root of title, and the title is by the subsequent deeds duly and regularly deduced therefrom, and there are no special circumstances making it desirable to commence at a more recent date, the abstract should be made to commence with that deed. But where this cannot conveniently be done, a condition must be inserted making the abstract to commence with a deed of more recent date. In the case of small properties, the production of a thirty or twenty years', or even a shorter title, will often be deemed sufficient, and a condition to that effect will not deter a purchaser.

The Conveyancing Act, 1881, sect. 3, sub-sect. 3, provides that a purchaser shall not require the production, or any abstract or copy, of any document, dated or made before the time prescribed by law or stipulated for commencement of the title, even though the same creates a power which is subsequently exercised by an abstracted instrument, nor require any information, or make any requisition, objection, or inquiry, with respect to any such document or the title prior to that time, notwithstanding that any such document, or that prior title, is recited, covenanted to be produced, or noticed; and he must assume, unless the contrary appears, that the recitals contained in the abstracted instruments of any document forming part of the prior title, are correct, and give all the material contents of the document so recited, and that every document so recited was duly executed by all necessary parties, and perfected, if and as required, by fine, recovery, acknowledgment, inrolment, or otherwise.

If it is proposed to commence the title with a deed less than forty years old, and such deed is one which

As to the commencement of the title.

Purchaser precluded from requiring production of any document, &c., dated before stipulated commencement of title.

Condition should state nature of deed

with which
title com-
mences.

Earlier docu-
ment showing
serious defect
in present title
should not
be withheld.

Condition
should be
inserted where
vendor has
defective title.

What is a
misleading
condition.

would not be a satisfactory root of title, *e.g.*, a voluntary settlement, the condition should disclose its nature, otherwise it will be held to be misleading (*e*).

If the production of a document dated before the time stipulated for the commencement of the title would disclose a serious defect in the present title, *e.g.*, that the vendor had only an estate for life instead of the fee simple, or that his estate was otherwise determinable (*f*), or that the property was subject to a mortgage (*g*), a purchaser would not be precluded by the above enactment from objecting on this account, should he obtain knowledge of it, nor would the vendor be justified in concealing from him the document showing the defect.

Where a vendor is aware that his title is defective, the only proper and safe course is to state clearly on the face of the conditions the nature of the defect, and to provide that no objection shall be made on account thereof (*h*), or to refer the purchaser to, and give him an opportunity of inspecting before the sale, the documents showing the real state of the title, and provide that he shall accept such a title as the documents disclose. A general condition which does not state that there is any defect, though its language would be sufficiently comprehensive to cover it if known to exist, will not protect the vendor. Thus, where the conditions provided that no objection should be taken in respect of a specified under-lease, or in respect of "any other under-lease" prior to a certain date, and it appeared that there was another existing under-lease known to the vendor, it was held that he ought to have disclosed it, and had not relieved himself of this obligation by the general condition (*i*).

A condition will be deemed misleading if it requires

(*e*) *In re Marsh and Earl Granville*, 24 Ch. D. 11.

(*f*) *Else v. Else*, L. R. 13 Eq. 196.

(*g*) *Waddell v. Wolfe*, L. R. 9 Q. B. 515.

(*h*) See *Smith v. Watts*, 4 Drew. 338, as a case in which the condition was held sufficiently precise;

and *Drysdale v. Mace*, 5 De G. M. & G. 103; *Webb v. Kirby*, 7 *ib.* 376; and *Osborne v. Harvey*, 7 Jur. 229, as cases where the condition was held not binding, because not expressed with sufficient clearness.

(*i*) *Edwards v. Wickwar*, L. R. 1 Eq. 68.

the purchaser to assume something which the vendor knows to be untrue (*j*).

A vendor may stipulate for the sale of an estate with such title only as he happens to have, and a purchaser buying under such a contract cannot complain if he gets a defective title (*k*). Thus, where on a sale by the assignees of a bankrupt it was provided that the purchaser should have an assignment of the bankrupt's interest "under such title as he lately held the same, an abstract of which may be seen at the office of the solicitor," and the auctioneer stated that it was a re-sale on account of a defect in the title, and that the purchaser was not to expect a good title, the purchaser was compelled to complete, although the title was defective (*l*). So where the purchaser agreed to take the vendor's title without dispute, he was not allowed to object on account of the legal estate being outstanding (*m*). But a condition, that the purchaser shall only be entitled to the production of such of the deeds as are in the vendor's possession, does not affect the right of the purchaser to require the deduction of a good title, and to have the title verified by the production of other satisfactory evidence, if the deeds themselves are not produced (*n*). Conditions will not be construed to relieve the vendor from the liability of verifying the abstract by proper evidence, unless they are expressed in plain and unambiguous language to that effect.

Condition that purchaser shall accept such title as vendor has.

If the facts of a title are stated, and it is then stipulated that the purchaser shall take such title as those

(*j*) *Re Banister*, 12 Ch. D. 131. It is difficult, however, to reconcile with the proposition in the text the case of *Best v. Hammond*, 12 Ch. D. 4, where on a sale by a railway company of superfluous land it was stipulated that the purchaser should "assume and admit that everything (if anything was necessary) had been done by the company to enable them to sell, &c." It was discovered by the purchaser that the property had not been offered to the former owners, who had a right of pre-emp-

tion, and it was held that he was bound by the condition.

(*k*) *Freme v. Wright*, 4 Madd. 364. See also *Wilmot v. Wilkinson*, 6 B. & C. 506; *Spratt v. Jeffery*, 10 B. & C. 249; 8 L. J. K. B. 114; *Hume v. Pocock*, L. R. 1 Ch. 379.

(*l*) *Freme v. Wright*, *ubi supra*.

(*m*) *Duke v. Barnett*, 2 Coll. C. C. 337.

(*n*) *Southby v. Hutt*, 2 M. & C. 207; *Osborne v. Harvey*, 7 Jur. 229.

circumstances can confer upon the vendor, the purchaser will be bound to take the title, such as it is; but if the conditions state as a positive fact, and not as a conclusion of law from the circumstances detailed, that the vendor has a power to sell the fee, the purchaser is entitled to require the vendor to show his power to sell, as it may have arisen from separate and independent sources (*o*).

Condition where vendor cannot produce original deed.

If a vendor is unable to procure the production of original deeds not being instruments of record, he should insert a condition to protect him from objections on that account.

Right of purchaser to abatement of purchase-money, where there is a partial defect of title.

If a vendor is able to make a good title to a part only of the property which he has agreed to sell, or has a limited interest only in it, the purchaser, as a general rule (*p*), is entitled to take what the vendor can give him, with an abatement of his purchase-money in respect of the remainder (*q*). This doctrine has been applied in the following cases, viz.:—(1) where on a sale of the fee simple it turned out that the vendor had a life estate only, with remainder to another in fee (*r*); (2) where on a sale of the fee simple it turned out that there was a prior life interest which the vendor could not get in (*s*); and (3) where on a sale of the entirety, it turned out that the vendor had only an undivided moiety (*t*).

Not allowed where injustice would be done to vendor or third parties.

But the doctrine will not be applied if injustice would be thereby done to the vendor or to third parties. Thus, where land was settled on A. for life, with remainder to his sons in tail, with remainder to A. in fee, with a power of sale vested in another, and A.

(*o*) *Johnson v. Smiley*, 17 Beav. 223.

(*p*) The rule is of course liable to be modified by the terms of the contract, e.g., by a condition enabling the vendor to rescind in case of objections being taken. See p. 16, *infra*.

(*q*) *Mortlock v. Buller*, 10 Ves. 315.

(*r*) *Barnes v. Wood*, 8 Eq. 424.

(*s*) *Nelthorpe v. Holgate*, 1 Coll. 203; *Barker v. Cox*, 4 Ch. D. 464.

(*t*) *Hooper v. Smart*, L. R. 18 Eq. 683; *M'Kenzie v. Hesketh*, 7 Ch. D. 675; *Burrow v. Scammell*, 19 Ch. D. 175. In *Wheatley v. Slade*, 4 Sim. 126, it was said that specific performance with an abatement would not be allowed, where a large portion of the estate cannot be conveyed, but the decision is inconsistent with subsequent cases.

contracted to sell the fee simple as if it was his own, and the trustees refused to confirm the sale, it was held that the purchaser could not insist on a conveyance by A. of his life estate and ultimate remainder, on the ground (1) that it would be difficult to compute a just compensation, and (2) that the alienation of a partial interest would be prejudicial to some of the objects of the settlement.

A purchaser, though entitled, cannot be compelled to take a part instead of the whole, unless the part which the vendor cannot give him is so insignificant that the want of it must be immaterial. It is the tendency of the Courts to hold that a purchaser is entitled to have that which he contracted for (*u*).

Purchaser not bound to take part with abatement.

The legal implication arising out of the contract of sale that the vendor must show a good title, may be rebutted by evidence that the purchaser knew that the title was defective before he entered into the contract, but if the contract expressly provides that the vendor shall show a good title, evidence of the purchaser's knowledge is inadmissible, as this would be allowing a written contract to be varied or contradicted by parol evidence (*x*).

When notice of defective title precludes purchaser from objecting.

(B) *As to leaseholds, including property held by under-lease.*

Under an open agreement to grant or assign a lease, the intended lessor or vendor was formerly bound to produce and verify the lessor's title (*y*), unless the lease was by an ecclesiastical corporation (*z*), and a condition that the vendor should not be required to produce the lessor's title did not prevent the purchaser from himself investigating the title and objecting on the ground of defects thus discovered (*a*). But in a case where the condition was that the lessors' title would not be shown and should not be inquired into, and the purchaser on inquiry discovered that the lessors had no power of leasing the property, it was held that he was precluded

Under old law, vendor of lease was bound to produce lessor's title under an open agreement.

(*u*) *Knatchbull v. Grueber*, 3 Mer. 41, 146; *In re Arnold*, 14 Ch. D. 70.

(*x*) *Re Gloag & Miller*, 23 Ch. D. 20; *Cato v. Thompson*, 9 Q. B. D. 16.

(*y*) Sug. V. & P. 307; *Shanks v. St. John*, L. R. 2 C. P. 376.

(*z*) *Fane v. Spencer*, 2 Mer. 430.

(*a*) *Shepherd v. Keatley*, 1 C. M. & R. 117; 3 L. J. (N. S.) Ex. 288.

by the condition from raising any objection to the title on this account (*b*).

The language of the condition in the last-mentioned case was considered as precluding inquiry from any quarter, and consequently all objection; but a condition that "the title shall commence with the lease, and that no requisition or inquiry shall be made respecting the prior title," has been held to mean merely that no inquiry or requisition shall be made of the vendor, and not to preclude inquiry elsewhere, or objections founded on the result of such inquiry (*c*).

Secus under new law.

By the Vendor and Purchaser Act, 1874 (*d*), it is provided that under a contract to grant or assign a term of years, whether derived or to be derived out of a freehold or leasehold estate, the intended lessee or assign shall not be entitled to call for the title to the freehold. And by the Conveyancing Act, 1881, it is provided that when land is held by lease, the purchaser shall assume, unless the contrary appears, that the lease was duly granted (*e*).

Title to leaseholds begins with lease.

It follows that on a sale of leaseholds, the title will begin, in the absence of stipulation, with the lease, however recent in date. It is apprehended, however, that the purchaser would be able to raise objections to its validity on grounds appearing on the face of it, or discovered *aliunde*, and if it is wished to preclude such objections there must be a special condition.

If it is held with other property under same lease, fact should be stated.

When property offered for sale is part of a larger property held under one lease, the fact should be stated in the particulars, as otherwise a purchaser might object on the ground that he would be liable to eviction under the condition of re-entry for breaches of covenant committed in respect of the remaining property. No such objection can be made if the fact is stated (*f*).

Purchaser has notice of usual cove-

A purchaser of leaseholds will be deemed to have notice of the covenants and provisions in the lease, if

(*b*) *Hume v. Bentley*, 5 De G. & Sm. 520.

(*c*) *Darlington v. Hamilton, Kay*, 550; *Waddell v. Wolfe*, 9 Q. B. 515.

(*d*) Sect. 2, rule 1.

(*e*) Sect. 3, sub-sect. 4.

(*f*) *Walter v. Maunde*, 1 J. & W. 181; *Pattison v. Long*, 6 Beav. 590; *Camberwell & South London Building Society v. Holloway*, 13 Ch. D. 754.

they are usual ones, but not if they are unusual, unless an opportunity has been given him of inspecting the lease before the sale (*f*); and if the particulars contain any misrepresentation (*g*) or important omission, calculated to mislead a purchaser (*h*), he is not precluded from objecting or claiming compensation merely because an inspection of the lease would have disclosed the real state of the case.

nants in lease, but there must be no misrepresentation.

On the sale of leaseholds which have been renewed from time to time, it may be necessary to negative the right of the purchaser to call for the production of the surrendered leases.

Renewable leaseholds.

If the property offered for sale is an under-lease, the fact should appear in the particulars or in the conditions, for if it is described as a lease the contract cannot be enforced (*i*). The purchaser has a right to assume that he will be under no liabilities except those created by the lease under which he holds, whereas, if there is a superior lease, he will be liable also to be evicted by the superior landlord in the event of any breach of the covenants in the superior lease. And it is apprehended that it would make no difference if the covenants in the two leases were identical, because, although the purchaser would be safe from eviction if he faithfully observed such covenants, he would, in the event of a breach, or an intended breach, have to settle with two landlords instead of one, and be to this extent in a worse position.

An under-lease should be described as such. If it is described as a lease, the contract will not be enforced.

It is considered that no objection could be made *merely* because the grantor of the lease, which is the subject of the purchase, was the owner not of the freehold, but of a chattel interest only in the land, *e.g.*, a long term of years free from rent, and free also from any covenant or condition of re-entry (*k*). In such a case the instrument creating the term would create no liability by which the purchaser could be affected, directly or indirectly.

If the grantee of the lease holds a long term of years free from rent, or any covenant or condition of re-entry, objection does not apply.

If leasehold property has been demised to a mort-

It is a misdescription

(*f*) *Reeve v. Berridge*, 20 Q. B. D. 523.

(*g*) *Weston v. Savage*, 10 C. D. 736.

(*h*) *Jones v. Rimmer*, 14 Ch. D. 588.

(*i*) *Darlington v. Hamilton*, 1 Kay, 550; *Blake v. Phinn*, 3 C. B. 976; 16 L. J. C. P. 159.

(*k*) See *Darlington v. Hamilton*, *ubi supra*.

to describe property as held under a lease, if the last few days of the term are outstanding.

gagee for the term created by the lease, except the last few days, and the mortgagee, or some person deriving title under him, puts it up for sale, describing it as held for the whole term, without disclosing that the last few days are outstanding, this is a misdescription which invalidates the sale. And a purchaser cannot in such a case avail himself of the usual condition about misdescriptions, because such a condition applies only to physical or patent errors (*l*).

Such omission is not a misdescription.

It has been held that where property is described as held on lease, and there is a condition that the lease may be inspected before the sale, and that a purchaser shall be deemed to have notice of its contents, he will be deemed to have notice accordingly, and cannot object if the lease on the face of it appears to be an underlease, it being no misdescription to describe an underlease as a lease (*m*). The soundness of this decision seems open to question.

Purchaser of an under-lease has constructive notice of usual covenants in original lease.

If property is sold as an under-lease, the purchaser will be considered to have constructive notice of the covenants in the original lease, except any which may be of an unusual character (*n*); and it is not an objection to the title that the under-lease may become forfeited by the breach of the covenants in the original lease (*o*).

Purchaser of under-lease not entitled to production of title to leasehold reversion.

It is provided by the Conveyancing Act, 1881, that under a contract to sell and assign a term of years derived out of a leasehold interest in land, the intended assign shall not have the right to call for the title to the leasehold reversion (*p*); and that where land sold is held by under-lease the purchaser shall assume,

(*l*) *Madeley v. Booth*, 2 De G. & Sm. 718; *In re Beyfus and Master's Contract*, 39 Ch. D. 116. In the last-mentioned case the Court of Appeal approved of *Madeley v. Booth*, which had been dissented from by Jessel, M. R., in *Camberwell, &c. Society v. Holloway*. It will be observed, however, that both in *Madeley v. Booth* and in *Beyfus and Master's Contract* there does not seem to have been any clause in the mortgage deed declaring that the mortgagor should hold the outstanding days of the

term in trust for the purchaser. If there had been such a clause, it is apprehended that the title would have been good, as a vesting order might have been obtained under the Trustee Act.

(*m*) *Camberwell, &c. Society v. Holloway*, 13 Ch. D. 754.

(*n*) *Flight v. Barton*, 3 M. & K. 282; *Cosser v. Collings*, *ib.* 283; *Hyde v. Warden*, 3 Ex. Div. 72; *Reeve v. Berridge*, 20 Q. B. D. 523.

(*o*) *Hayford v. Criddle*, 22 Beav. 477.

(*p*) Sect. 3, sub-sect. (1).

unless the contrary appears, that the under-lease and every superior lease were duly granted (g).

It is apprehended that these enactments do not alter the position of the vendor as regards his duty to disclose the fact that the property is held by under-lease, and that if the fact is not disclosed, a purchaser discovering it *aliunde* may under the new as well as under the old law refuse specific performance, unless the vendor satisfies him by production of the superior lease that it contains nothing to prejudice him; while on the other hand, if the fact is disclosed, the purchaser will, under the new as well as the old law, be deemed to have notice of the contents of the superior lease, because he may, if he chooses, ask for its production before he bids, and it is his own fault if he does not do so.

Under new as well as old law, vendor should disclose fact that property is held by under-lease.

When the vendor of property held by under-lease is in a position to produce the superior lease, it is desirable as a general rule that he should give intending purchasers the opportunity of inspecting it, as well as the under-lease, at or before the sale (r).

Inspection of superior lease should be offered.

By the Conveyancing Act, 1881, it is provided, as regards property held by lease or under-lease, that on production of the receipt for the last payment due for rent under the lease or under-lease before the date of actual completion of the purchase, the purchaser shall assume, unless the contrary appears, that all the covenants and provisions of the lease or under-lease have been duly performed and observed, and in case of an under-lease that all rent due under every superior lease and all the covenants and provisions of every superior lease have been paid and duly observed and performed, up to the date of actual completion of the purchase (s). A mere nominal rent is not within this section (t).

Receipt for last payment of rent under lease or under-lease to be evidence of observance of covenants.

This enactment would not, it is apprehended, preclude a purchaser from showing that there had been a breach of covenant. It would therefore be safer, as a general rule, to insert a condition making the last receipt conclusive evidence of the performance of the

(g) Sect. 3, sub-sect. (5).

(r) *Smith v. Watts*, 4 Drew. 338.

(s) Sect. 3, sub-sects. 4 and 5.

(t) *In re Moody and Yates' Contract*, 30 C. D. 344.

covenants or of the waiver of any breach up to the time of completion.

Property held
on lives.

On the sale of an estate held on lives, the vendor must supply the purchaser (at the latter's expense) with the requisite evidence in proof of the existence and correct ages of the *cestuis que vie*.

(C) *As to tithes, enfranchised copyholds, enclosure allotments, exchanges.*

Title to tithes.

In the absence of stipulation, the title to tithes or tithe rent-charge held as a lay property must commence with the original grant from the Crown, and then the title should be taken up and regularly deduced for a period of forty years previous to the time of sale (*u*).

Enfranchised
copyholds.

In the case of copyholds which have been enfranchised, the purchaser was, before the recent Act, entitled to call for the production, not only of the copyhold title, but also of the title of the lord of the manor down to the period of the enfranchisement, unless the enfranchisement was under the Copyhold Acts (*v*). But it is now provided by the Conveyancing Act, 1881, that, under a contract to sell and convey enfranchised copyholds, the purchaser shall not have the right to call for the title to make the enfranchisement (*x*).

Enfranchised
copyholds.

On the sale of property formerly copyhold which has been enfranchised, the particulars or conditions should except from the sale the minerals and other rights reserved by the Copyhold Acts to the lord of the manor (*y*).

Allotments.

In the absence of express stipulation, on the purchase of allotments under an Inclosure Act, the title to the property in respect of which the allotment is made must be deduced down to the period of the award, and if the allotment is made in respect of lands held under different titles, all the titles must be shown (*z*);

(*u*) It seems doubtful whether sections 1 and 2 of the Vendor and Purchaser Act, 1874, are applicable to a contract for sale of tithe rent-charge.

(*v*) *Kerr v. Pawson*, 25 Beav. 394.

(*x*) Sect. 3, sub-sect. (2).

(*y*) *Upperton v. Nickolson*, L. R. 6 Ch. 436.

(*z*) *Dart*, 326, 6th edition.

and such allotments are freehold, copyhold, or leasehold, according to the tenure of the land in respect of which the allotment is made (a).

Where an exchange is made under the powers of the General Inclosure Act, 1845 (b), the title to the land given in exchange is transferred to the land taken in exchange; and consequently the title to be deduced to a purchaser in such a case is the title to the land given in exchange, up to the date of such exchange, and afterwards the title to the land taken in exchange. Exchanges.

(D) *As to incumbrances which cannot be discharged.*

If the property is subject to any incumbrance which cannot be discharged, the conditions should provide for this defect in the title. All the facts connected with such incumbrance should be accurately stated; and, if it is not likely to be enforced, it may be sufficient to bind the purchaser to make no objection on that account, and in other cases, it may be expedient to offer an indemnity to the purchaser, and to provide that he shall be satisfied therewith: but it is very important that the terms and nature of the indemnity should be clearly stated. In the absence of special contract, a purchaser cannot be compelled to take a defective title with an indemnity, nor can a vendor be compelled to give an indemnity (c). When property liable to charges which cannot be paid off.

In some cases it may be necessary or desirable to apply to the Court to have the land discharged from an incumbrance under sect. 5 of the Conveyancing Act, 1881. That section enables the Court, on the sale of land subject to any incumbrance, whether immediately payable or not, and on the application of any party to the sale, to direct or allow payment into Court, in case of an annual sum charged on the land, or of a capital sum charged on a determinable interest in the land, of such amount as, when invested in Government securities, the Court considers will be Power of Court to provide for incumbrances, and to free land therefrom.

(a) 8 & 9 Vict. c. 118, s. 94.

(b) *Ibid.* s. 147.

(c) *Balmanno v. Lumley*, 1 V. & B.

224; *Paton v. Brebner*, 1 Bligh, 66;

Aylett v. Ashton, 1 My. & Cr. 105;

Bainbridge v. Kinnaird, 9 Jur. 862.

sufficient, by means of the dividends thereof, to keep down or otherwise provide for that charge, and in any other case of capital money charged on the land, of the amount sufficient to meet the incumbrance and any interest due thereon; but in either case there must also be paid into Court such additional amount as the Court considers will be sufficient to meet costs, interest, and other contingencies, and thereupon the Court may declare the land to be freed from the incumbrance and may make any order for a conveyance or vesting order proper to give effect to the sale.

(E) *As to stamping of documents.*

Purchaser
may require
deeds to bear
proper stamp.

A purchaser is entitled to require that all the title deeds bear the proper stamp (*d*). If, therefore, any deed executed before the 16th May, 1888 (*dd*), is unstamped or insufficiently stamped, the conditions should provide that the expense of stamping shall be borne by the purchaser, if he requires it to be done.

(F) *As to identification of parcels.*

Identification.

It is a necessary part of the deduction of a good title to provide satisfactory evidence of the identity of the parcels. To do this completely is often difficult, so that some provision qualifying the purchaser's right in this respect is generally introduced. In a case where it was provided "that no further evidence of identity shall be required than what is afforded by the abstract or the documents therein abstracted," and the descriptions in the documents differed among themselves and from the descriptions in the particulars of sale, the purchaser was held entitled to further proof of identity (*e*). And in another case, where it was provided "that the purchaser shall not require any further proof of identity than is furnished by the title deeds themselves," Kindersley, V.-C., observed, "I am of opinion

(*d*) See Whiting to Loomes, 14 Ch. D. 822; 17 *ib.* 10. But see *Ex parte Birkbeck, &c. Society*, 24 Ch. D. 119.

(*dd*) Such a condition would be void as to any deed dated after that day. 51 Vict. c. 8, s. 20.

(*e*) *Fowler v. Hartropp*, 6 Beav. 476.

that under this condition, if the deeds do not show identity, the purchaser cannot call for any other evidence; but that, on the other hand, the contract is in effect that the deeds shall show identity, so that if they do not, a good title is not made" (f).

(G) *As to time for sending in requisitions, and conditions enabling vendor to rescind on account of objections taken.*

It is a common and proper condition that a purchaser shall make all his requisitions and objections within a given time, and that all objections not made within that time shall be considered to be waived. Such a condition applies only from the delivery of a *perfect* abstract; *i. e.*, an abstract which sets out with sufficient fulness every instrument which forms part of the vendor's title, and states every material fact (g). An objection may be raised after the prescribed period arising out of any evidence called for within that time (h), or in respect of matters discovered *aliunde* (i). Nor will the condition be binding when the title is manifestly bad on the face of the abstract, *e. g.* where the vendor is a trustee, and the time for sale has not arrived (k). If a vendor does not deliver a perfect abstract within the time specified by the conditions, the purchaser will not be bound to send in his objections within the time limited for that purpose (l).

Condition requiring objections to be made within a given time applies from delivery of perfect abstract.

Does not bind where title clearly bad,

nor where abstract not delivered in time.

The existence of an incumbrance on the property, which the vendor has a present right to pay off, or of an outstanding estate, of which the vendor has a present right to call for a conveyance, is not a ground of objection to the title. The vendor is bound to pay off the incumbrance or to get in the outstanding estate as

Does not apply to matter of conveyance.

(f) *Curling v. Austin*, 2 D. & Sm. 129, 135.

345.

(g) *Oakden v. Pike*, 11 Jur. N. S. 666; *Blacklow v. Laws*, 2 Hare, 40.

(k) *Want v. Stallibrass*, 8 Exch. 175.

(h) *Blacklow v. Laws*, *ubi supra*.

(i) *Ward v. Dickson*, 5 Jur. N. S.

(l) *Upperton v. Nickolson*, L. R. 6 Ch. 436; *Southey v. Hutt*, 2 M. & C. 201.

a matter of conveyance, whether the purchaser has made a requisition to that effect within the time prescribed by the condition above referred to or not (*m*).

Recovery of deposit, &c.

If a purchase goes off on account of a defect of title the purchaser may recover the deposit, with interest from the time of payment, as well as all his costs in investigating the title and in searching for judgments, &c. (*n*). The purchaser, moreover, would seem in such case to have a lien on the estate for the deposit (*o*).

Condition enabling the vendor to rescind in case of objections made.

It is now a common condition that the vendor may annul the sale on the purchaser insisting on any objection or requisition which the vendor shall be unable or unwilling to remove, and that in such case the vendor shall return the deposit, but without interest, and that the purchaser shall have no claim on the vendor for the expenses of investigating the title, or other expenses. The following points have been decided with respect to this condition, viz. :—

Notice to rescind need not give time to waive the objection.

1. That if a purchaser insists upon a requisition, after being informed that the vendor is unable to comply with it, the vendor may rescind the sale by notice, and such notice need not give the purchaser a time within which to waive his requisition (*p*).

Vendor must show some reasonable ground for "unwillingness" to comply with requisition.

2. That if the vendor seeks to rescind as being "unwilling," there must be some reasonable ground for unwillingness, *e.g.*, that to comply with the requisition would involve trouble and expense (*q*), and he cannot use the condition for the purpose of getting rid of the duty which attaches to him upon the rest of the contract, of making out the title. He must give the best answer he can to the purchaser's questions, and it is then for the purchaser to say whether he will accept such title as the vendor can give him (*r*). Thus, if the property is subject to a mortgage, he is bound to pro-

(*m*) *Townsend v. Champernown*, 1 Y. & J. 449; *Avarne v. Brown*, 14 Sim. 303; *Sidebottom v. Barrington*, 3 Beav. 524; *Savory v. Underwood*, 23 L. T. R. 141.

(*n*) *Pounsett v. Fuller*, 17 C. B. 660; *Sikes v. Wild*, 7 Jur. N. S. 1280.

(*o*) *Wythes v. Lea*, 3 Drew. 396.

(*p*) *Duddell v. Simpson*, L. R. 2 Ch. 102.

(*q*) *In re Dames*, 29 Ch. D. 626; *Mawson v. Fletcher*, L. R. 6 Ch. 91.

(*r*) *Turpin v. Chambers*, 29 Beav. 104; *In re Monckton and Gilzean*, 27 Ch. D. 555.

cure the concurrence of the mortgagee, and pay him off out of the purchase-money (*s*).

3. That a vendor may avail himself of this condition, where an objection is made to the sufficiency of his title as regards a part only of the property, and that he cannot in that case be compelled to complete as to the remainder with an abatement (*t*). On the other hand, he will not be allowed to rescind, if he has put up property for sale, knowing, or under circumstances in which he must be presumed to know, that as regards the whole or a portion of it he has no title at all, or that he has only a partial interest in it (*u*).

Vendor can rescind when objection is made as to part.

Not if he knows his title is defective.

4. That where there is this condition, and also a condition providing that misdescriptions shall be the subject of compensation, the two conditions will be construed together, and cases coming within the latter condition will be excluded from the former one (*x*). But if a purchaser claims an abatement of his purchase-money under the ordinary rule of equity and not under an express condition, such a claim is a requisition on a "matter appearing in the particulars," within the meaning of the ordinary condition, and entitles the vendor to rescind accordingly (*y*).

When condition applies to misdescriptions.

It has also been held that the right of rescinding is waived if the vendor expresses his willingness to remove objections, or enters into correspondence with that view (*z*). To meet this it is usual to insert in the condition the words "notwithstanding any attempt to remove the same," or words to that effect.

Vendor waives right to rescind by attempting to remove objection.

(*s*) *Greaves v. Wilson*, 25 Beav. 290. See *In re Jackson and Oakshott*, 14 Ch. D. 851.

(*t*) *Heppenstall v. Hose*, W. N. 1884, p. 199.

(*u*) *Bowman v. Hyland*, 8 Ch. D. 588; *Nelthorpe v. Holgate*, 1 Coll. 203.

(*x*) *Hoy v. Smithies*, 22 Beav. 510.

See *Painter v. Newby*, 11 Hare, 26; *Cordingley v. Cheeseborough*, 3 Giff. 496.

(*y*) *Re Terry and White's Contract*, 32 Ch. D. 14. See also *Cordingley v. Cheeseborough*, 4 D. F. & J. 379.

(*z*) *Tanner v. Smith*, 10 Sim. 410; *Morley v. Cook*, 2 Ha. 106.

II. *Conditions relating to the completion of the purchase.*

Day for completing the purchase.

When time is of the essence of the contract.

When the abstract is perfect.

As to interest on purchase-money.

The conditions should name the day on which the purchase is to be completed.

In equity time is held to be of the essence of the contract only in cases of strict stipulation or of necessary implication (*a*). The cases of strict stipulation are where the parties introduce a clause expressly stating that time is to be of the essence of the contract (*b*). The cases of necessary implication are where the circumstances of the case require it, as where the property sold is required for some immediate purpose, or where the property is of a determinable or precarious nature, or where the purchase is made for the residence of the purchaser, and the vendor contracts to deliver possession by a certain day (*c*). But although time was not originally an essential part of the contract, either party may, by a proper notice, bind the other to complete within a reasonable time to be specified in such notice, and if the party receiving such notice do not complete within the time specified, equity will not assist him to enforce specific performance of the contract. But if the Court sees that the means exist of completing within a reasonable time, and considers the time given by the notice insufficient, it will not give effect to such notice (*d*).

In the absence of express stipulation the purchaser is liable to pay interest on the purchase-money from the day fixed for completion, and is entitled from the same time to receive the rents. If, however, the purchase is not completed on that day owing to the vendor's fault or inability to make a good title, the purchaser will be bound to pay interest only from the time when a good title was first made (*f*), unless in the meantime

(*a*) *Parkins v. Thorold*, 16 Beav. 59; *Hudson v. Temple*, 29 Beav. 536; *Roberts v. Berry*, 3 De G. M. & G. 291; *Patrick v. Milner*, 2 C. P. Div. 342.

(*b*) *Webb v. Hughes*, L. R. 10 Eq. 281.

(*c*) *Tilley v. Thomas*, L. R. 3 Ch. 61.

(*d*) *Nott v. Ricard*, 22 Beav. 307; *Southcomb v. Bishop of Exeter*, 6 Hare, 213; *Parkin v. Thorold*, 16 Beav. 59; *Wells v. Maxwell*, 32 Beav. 408.

(*f*) *Esdaille v. Stephenson*, 1 Sim. & St. 122; *Jones v. Mudd*, 4 Russ. 118.

he has entered into possession or receipt of the rents and profits (*g*), or exercised acts of ownership (*h*), in which case interest will run from the date of his so doing. And even if he takes possession, he may free himself from the payment of interest by providing himself with the money and giving notice that it is lying idle (*i*). The rate of interest is generally 4 per cent. (*j*).

It is usual to insert a condition making the purchaser liable to the payment of interest, if *from any cause whatever* the purchase is not completed on the appointed day (*k*). In *De Visme v. De Visme* (*l*), there was this condition, and also a condition that the abstract should be delivered at a certain time. The vendor did not deliver an abstract at the time fixed, and it was held that the purchaser was liable to interest only from the time a good title was shown. But in more recent cases the omission to deliver a complete abstract at the proper time has been held insufficient to disentitle the vendor to the benefit of the condition; and it is now settled that where the delay, however long, is occasioned by the state of the title, and is not wilful on the vendor's part, the condition applies and interest is payable (*m*); and the purchaser cannot relieve himself from the interest by setting aside the purchase-money, and giving notice of the appropriation to the vendor (*n*).

Usual condition as to payment of interest.

Upon the completion of the purchase, the vendor is

As to custody of deeds on completion.

(*g*) *Fludyer v. Cocker*, 12 Ves. 25.

(*h*) *Ballard v. Shute*, 15 Ch. D. 122.

(*i*) *Dyson v. Hornby*, 4 De G. & Sm. 481; *Regent's Canal Company v. Ware*, 23 Beav. 575.

(*j*) *Wallis v. Sarrell*, 5 De G. & Sm. 429.

(*k*) See *Kershaw v. Kershaw*, L. R. 9 Eq. 56.

(*l*) 1 Mac. & G. 336; *Weddall v. Nixon*, 17 Beav. 160; *Robinson v. Skelton*, 12 Beav. 363.

(*m*) *Sherwin v. Shakspeare*, 5 De G. M. & G. 517; *Vickers v. Hand*,

26 Beav. 630; *Tewart v. Lawson*, 3 S. & G. 307; *Bannerman v. Clark*, 3 Drew. 632; *In re Young and Harston's Contract*, 31 Ch. D. 169; *Palmerston (Lord) v. Turner*, 33 L. J. Ch. 457; *Williams v. Glenton*, L. R. 1 Ch. 200. In the last-mentioned case a partition suit was necessary, which lasted three years. The Court held that the purchaser must pay interest, but intimated that he might have put an end to the contract altogether by giving a notice to that effect.

(*n*) *In re Riley to Streetfield*, 34 Ch. D. 386.

bound to deliver to the purchaser all deeds and documents of title in his possession relating to the property sold, unless they also relate to other property of the vendor, in which case, however small may be the value of the property retained, the vendor is entitled, under the Vendor and Purchaser Act, 1874, to keep them (*o*).

Expense of copies given to purchaser of deeds retained.

Where the vendor retains possession of any document, the purchaser may require an attested or other copy thereof to be delivered to him, but the expense of making such copy must be paid by him in the case of any sale made after the 31st Dec. 1881 (*p*).

What covenants or acknowledgments for production a purchaser is entitled to.

The purchaser is entitled to a covenant for the production of documents not delivered to him (other than wills or instruments on record), or, under the recent Act (*q*), to an acknowledgment of his right to their production, which covenant or acknowledgment should be entered into or given by the vendor or other the person holding the documents. If, however, the vendor is unable to procure a legal covenant for production, or an acknowledgment equivalent thereto, such inability is not, under the new law, an objection to the title in case the purchaser will, on completion, have an equitable right to the production of the documents (*r*).

Beneficial owner must give a statutory undertaking for safe custody.

It is clear that a vendor retaining deeds is bound if a beneficial owner to give the statutory undertaking for safe custody, as well as the statutory acknowledgment. But where he is a trustee it is now the general practice to stipulate that he shall give the acknowledgment but not the undertaking (*s*).

Expense of covenants for production, by whom borne.

The Vendor and Purchaser Act, 1874, provides that such covenants for production as the purchaser can and shall require shall be furnished at his expense, but

- (*o*) Sect. 2, rule 5.
- (*p*) Conveyancing Act, 1881, sect. 3, sub-sect. 6.
- (*q*) Sect. 9.
- (*r*) Vendor and Purchaser Act, 1874, sect. 2, rule 3.
- (*s*) The Editors remain of the opinion expressed in former editions, that, in principle, a trustee-vendor should give the undertaking,

as it involves no greater obligation than that imposed by the qualified covenant which it was usual for a trustee to give before the Act. But the contrary practice has become so general that it is better to follow it, particularly as the point is of little practical importance. A person who holds deeds is likely to take care of them for his own sake.

the vendor is to bear the expense of perusal and execution on behalf of himself and other necessary parties other than the purchaser (*t*).

On the sale of an estate in lots, where the conditions are silent as to the custody of the deeds, the purchaser of the lot which is the largest in value is entitled to their custody; but under a condition that the purchaser of the largest lot shall have them, the purchaser of the largest lot in superficial area will be entitled to the deeds (*u*). Under a condition that the title deeds are to be delivered to the purchaser of the largest lot, the purchaser of the largest lot in value and extent is entitled to the custody of the deeds as against a purchaser of several lots whose aggregate value and extent exceed those of the largest lot (*v*). In a case where it was stipulated that the vendor should not be required to produce any deeds not in his possession, and that all deeds of covenant for production of deeds should be obtained *by* and at the expense of the purchaser, it was held that the vendor was not bound to procure covenants for production from third parties holding the deeds and not in the hands of the vendor (*x*).

Custody of deeds on sale in lots.

III. *Conditions relating to misdescriptions in the particulars, and to compensation in respect thereof* (*y*).

The particulars of sale should accurately describe the property which is the subject-matter of the sale. The tenure should be stated, and, if let to a tenant, the nature and terms of the tenancy, and the rent paid by him. If it is subject to any charge or obligation of any description, this also should be stated; in short,

What the particulars should state.

(*t*) Sect. 2, rule 4.

(*u*) *Griffiths v. Hatchard*, 1 K. & J. 17.

(*v*) *Scott v. Jackman*, 21 Beav. 110.

(*x*) *Gabriel v. Smith*, 16 Q. B. 847; 20 L. J. Q. B. 386.

(*y*) This chapter relates only to misdescriptions properly so called,

not to cases where a purchaser claims compensation or other relief on the ground that the vendor is unable to make a title to a part of the property, or to some interest in the property, which he professes to sell. As to cases of this kind, see p. 6, *supra*.

the particulars should contain all such information as is necessary to apprise the purchaser of the real nature of the property put up for sale. There must be no wilful concealment of anything which it is material for the purchaser to know, no ambiguity in the description which is likely to mislead him.

Rules of law and equity as to misdescription.

Before the Judicature Act came into operation an error in a material part of the description, however slight, rendered a contract void at law: but courts of equity would often enforce specific performance, notwithstanding a misdescription, with an abatement of the purchase-money by way of compensation, at the suit either of the vendor or of the purchaser. The rules of equity are now the rules of every branch of the Supreme Court of Judicature.

Effect of usual condition as to misdescriptions.

It is usual, however, to make express provision for misdescriptions by a condition of sale. One in common use provides that misdescription in the particulars shall not annul the sale, but compensation shall be made in respect thereof by either party, as the case may require, the amount of such compensation to be settled by two referees or their umpire.

Division of the subject.

It will be convenient to consider—1st. What is such a misdescription as will entitle a purchaser *at least* to compensation. 2ndly. What is such a misdescription as will entitle a purchaser to rescind the contract altogether. And 3rdly. Whether in any and what cases a vendor can avail himself of a condition entitling him to compensation for misdescriptions.

1. *What is such a misdescription as will entitle a purchaser at least to compensation.*

Ordinary condition only applies to errors which would otherwise vitiate the contract.

It has been decided that the ordinary condition as to misdescriptions applies only to such errors as in the absence of the condition would have vitiated the contract at law (z). In other words, if the error is such that in the absence of the condition the party complaining of it would nevertheless have been compelled

(z) *Leslie v. Thompson*, 9 Hare, 268.

to complete the purchase without compensation, the condition does not apply. It follows that in considering this part of the subject it is immaterial whether there is, or is not, the usual condition as to misdescriptions. If according to the true construction of the particulars the property is misdescribed, the purchaser is entitled to compensation; in the one case, by the general principles of equity, in the other case, by virtue of the condition. If, however, according to the true construction of the particulars there is no misdescription, he cannot in either case claim compensation.

Where the error is as to the quantity, the purchaser is, as a general rule, entitled to an abatement out of his purchase-money for so much as the quantity falls short of the representation. For though the land is not sold professedly by the acre, the presumption is that in fixing the price regard is had to the quantity which both suppose the estate to consist of, and therefore a rateable abatement of the price will probably leave both parties in nearly the same relative situation in which they would have stood if the quantity had been originally known. But the abatement will not be rateable, if it appears that the parties have calculated the value on some other basis (*a*).

Qualifying words such as "or thereabouts," "more or less," or "by estimation," or even a condition that the quantities shall be taken as correct, and negating any right to compensation for an error in quantity, will only cover slight errors. Thus a purchaser has been compelled to accept without compensation property described as containing by estimation forty-one acres, more or less, but really containing only thirty-six acres (*b*); but not a farm described as containing "by estimation 349 acres, or thereabouts, be the same more or less," but which fell short of that quantity by 110 acres (*c*); nor property described as containing 753 square yards or thereabouts, but in fact containing only 573 square yards (*d*), although in the two last

Error as to quantity.

Effect of expressions "or thereabouts," "more or less," "by estimation."

(*a*) *Hill v. Buckley*, 17 Ves. 394.
(*b*) *Winch v. Winchester*, 1 V. & B. 375.

(*c*) *Portman v. Mill*, 2 Russ. 570.
(*d*) *Whittemore v. Whittemore*, L. E. 8 Eq. 603.

mentioned cases there was a condition negating the right to compensation (e).

Proper test to apply to qualifying expressions.

It is conceived that where the quantity is stated to be by estimation, or where other expressions are used with a view to protect the vendor from the obligation of making good a deficiency in quantity, the question whether the purchaser is bound or not, depends on whether the quantity stated is or is not the result of a genuine estimate. If the difference is small, there would be little difficulty in arriving at an affirmative conclusion, but if the discrepancy is great, it would be impossible to avoid the conclusion that the vendor has inserted a description which he knew to be false, or had no substantial reason for believing to be true, and this would be fraud (f).

Vendor bound to disclose latent defects,

A vendor is bound to disclose latent defects, *i. e.*, such defects in the state and condition of the property as a purchaser using ordinary diligence cannot discover for himself, provided that the vendor is himself aware of them (g).

and easements.

The same rule applies to easements, restrictive covenants, and other burdens derogating from the absolute ownership of the property, without the qualification that the vendor must be aware of them himself. The existence of burdens of the above kind is a valid ground of objection to the title if the purchaser did not know of them at the date of the contract, but discovers them at any time afterwards before completion, whether the vendor knew of them or not (h); and it has been held that an agreement for the purchase of a lease is not constructive notice of onerous covenants therein, unless an opportunity has been given the purchaser of inspecting the lease before the sale (i).

(e) Where there is a condition negating the right to compensation, and there turns out to be a serious misdescription, it would seem that such a condition prevents the purchaser from insisting on specific performance with compensation, but does not enable the vendor to enforce specific performance without it. *Cordingley v. Cheeseborough*, 4 D. F. & J. 379; *Re*

Terry and White's Contract, 32 Ch. D. 14.

(f) See *Joliffe v. Baker*, 11 Q. B. D. 255.

(g) *Mellish v. Motteux*, 1 Pea. N. P. C. 156; *Martin v. Cotter*, 3 Jo. & Lat. 496; *Lucas v. James*, 7 Hare, 410.

(h) *Ellis v. Rogers*, 29 Ch. D. 661.

(i) *Reeve v. Berridge*, 20 Q. B. D. 523.

As to restrictive covenants it will be borne in mind that they do not run with freehold land at law, and that after the land affected by them has been acquired by a *bonâ fide* purchaser without notice, they cannot be enforced in equity either against that purchaser or against any person claiming title under him, whether the latter has notice of them or not. But a purchaser who after the contract discovers the existence of covenants of this kind cannot be compelled to complete, because his title will depend on the vendor's want of notice, and he may find that he has bought a law suit (*k*).

Rule as to restrictive covenants.

As regards patent or obvious defects in the state and condition of the property or easements, such as a purchaser with ordinary diligence could discover for himself, *e. g.*, a footpath over a field (*l*), the vendor is not bound to disclose them, but he must not studiously conceal them.

Vendor not bound to disclose patent defects or easements.

A condition that the property is sold subject to all easements affecting it, does not exempt the vendor from disclosing an easement of which he was aware, and of which the purchaser was not aware (*m*).

Effect of condition that property is sold subject to easements.

If property is described by its usual known description, and there is no fraud on the vendor's part, the purchaser is not entitled to compensation, though it may turn out that the property is not what from its description it might naturally be supposed to be. Thus, where a house at Brighton was sold as No. 39, Regency Square, and it was afterwards discovered that the house, though always named 39, Regency Square, was not actually in the Square, but in a side street communicating with the Square, this was held to be no misdescription (*n*).

Purchaser not entitled to compensation where description though correct, misleads him, there being no fraud on vendor's part.

(*k*) Sug. V. & P. 14th ed. p. 753; Nottingham Patent Brick, &c. Co. v. Bowles, 16 Q. B. D. 778. In this case the Court seems to have considered that but for certain special circumstances the purchaser could not have recovered his deposit, on the ground that the title, though one which could not be enforced, was nevertheless a good

holding one. It is submitted that if a purchaser cannot be compelled to bring a law suit, he ought not to be fined for declining to do so.

(*l*) Oldfield v. Round, 5 Ves. 508.

(*m*) Heywood v. Mallalieu, 25 Ch. D. 357.

(*n*) White v. Bradshaw, 16 Jur. 738.

Indefinite representations as to matters of opinion do not entitle purchaser to compensation—*secus* where the representation is as to a matter of fact.

Vague and indefinite representations with respect to what is a mere matter of opinion do not entitle a purchaser to compensation. Thus, where land was described as uncommonly rich water-meadow, and it turned out that though water-meadow it was imperfectly watered, it was held that the purchaser was not entitled to compensation (*o*). But if the vendor takes upon himself to make a specific and definite representation as to a matter of fact, he is bound to make it good. He must not make an inaccurate statement, and then say, "it was the duty of the purchaser before he bid to institute inquiries and correct mistakes and misdescriptions in the particulars," nor may he make an ambiguous statement by which a purchaser is likely to be deceived.

Instances of cases in which purchaser has been held entitled to compensation.

In accordance with the principles above laid down, the purchaser has been held entitled to compensation, either under the general rule of equity, or under a special condition making misdescriptions the subject of compensation, in the following cases, viz. :—

Where a house described as in good repair turned out to be very much out of repair, and the defect was not apparent except on minute investigation (*p*).

Where property was described as "well supplied with water," and it turned out that the supply was from waterworks on payment of water rates, the Court being of opinion that the purchaser was led by the description to believe that there was a supply of water on the property itself (*q*).

Where property was described as customary leasehold, and renewable every twenty-one years on payment of a customary fine, and it turned out that there was no right of renewal (*r*).

Where on the sale of a manor it was stated that the fine was two years' improved value,

(*o*) *Scott v. Hanson*, 1 R. & M. 128.

(*p*) *Dyer v. Hargrave*, 10 Ves. 505. See also *Grant v. Munt*, Cooper, 173.

(*q*) *Leyland v. Illingworth*, 2 De G. F. & J. 248.

(*r*) *Painter v. Newby*, 11 Hare, 26.

and it turned out that this was not the case (*s*).

Where property was described as in the occupation of the owners of a certain colliery, their under-tenants or workmen, but it was not stated (as the fact was) that such owners were entitled to use the cottages for their workmen rent free (*t*).

Where the land is subject to a reservation of mining or other rights, unless the Court is satisfied that there is no subject-matter for the reservation to act on, or that all legal right to exercise it has ceased (*u*).

Where the particulars of sale mentioned the premises as being then let at a rental of £30 per annum, and it was afterwards discovered that all the rates and taxes were by agreement payable by the landlord (*x*).

But if in cases of misdescription it can be shown that the purchaser was aware of the actual state of the property at the time of his purchase, he will not be allowed either to rescind the contract or to claim compensation. Such knowledge however must be proved, and will not be presumed from circumstances which render it probable that he possessed it. Thus it has been held that a purchaser cannot be presumed to know the measurements of a piece of land because it has been in his actual occupation, or to know of easements affecting it, because he lived in the neighbourhood (*y*).

Purchaser not entitled to compensation if aware of the actual state of the property.

(*s*) *Hoy v. Smithies*, 22 Beav. 510.

(*t*) *Brandley v. Plummer*, 2 Drew. 427.

(*u*) *Seaman v. Vawdrey*, 16 Ves. 390; *Martin v. Cotter*, 3 Jo. & Lat. 496; *Lyddall v. Weston*, 2 Atk. 19. Whether, however, an outstanding right to minerals is a proper subject of compensation, see *Powell v. Smithson*, 20 L. T. 105.

(*x*) *Bos v. Helsham*, L. R. 2 Exch. 72. See also *Barnes v. Wood*, L. R. 8 Eq. 424.

(*y*) *Dyer v. Hargrave*, 10 Ves. 505; *Farebrother v. Gibson*, 1 De

G. & J. 602. The statement in the text is applicable to misdescriptions properly so called. It is also applicable to cases where the property is subject to easements, restrictive covenants, or other burdens constituting a ground of objection to the title, unless the vendor has expressly agreed to make a marketable title or to sell free from incumbrances. In the latter case the vendor is bound to obtain a release of the burden whether the purchaser was aware of it or not. *Cato v. Thompson*, 9 Q. B. D. 616.

2. *What is such a misdescription as will entitle a Purchaser to rescind the contract.*

Extent to which equity has carried its jurisdiction of obliging a purchaser to take property with compensation.

The jurisdiction of equity to compel a purchaser (in the absence of stipulation) to take the property with an abatement of the purchase-money in respect of a misdescription, was, in some of the early cases, carried to a great length. But these cases have been disapproved of^(z), and the principle was thus stated by Lord Erskine, in *Halsey v. Grant*: "Where one party would be foiled at law but the other party can have the reasonable substantial benefit of his contract, compensation shall be admitted, but not where the effect will be to put on the purchaser something constitutionally different to that for which he contracted"^(a).

A similar rule applies where there is the usual condition, making misdescriptions a matter of compensation. Thus, in *Flight v. Booth*^(b), Tindal, C. J., observed: "It is extremely difficult to lay down from the decided cases any definite rule which shall determine what mis-statement or misdescription in the particulars shall justify a rescission of the contract, and what shall be a ground of compensation only. All the cases concur in this, that where the mis-statement is wilful or designed, it amounts to a fraud, and fraud vitiates the contract altogether. Where there is no fraud, we think it a safe rule to adopt that where the misdescription is on a material and substantial point so far affecting the subject of the contract that it may be reasonably supposed that but for such misdescription the purchaser would not have entered into the contract at all, the contract is avoided altogether, and the purchaser is not bound to resort to the claim of compensation. Under such a state of facts the purchaser may be considered as not having purchased the thing which is really the subject of the sale"^(c).

(z) See *Drew v. Hanson*, 6 Ves. 678; *Halsey v. Grant*, 13 Ves. 78.

(a) See *Baskcomb v. Beckwith*, L. R. 8 Eq. 100.

(b) 1 Bing. N. C. 370; 4 L. J. (N. S.) C. P. 66.

(c) *Dimmock v. Hallett*, L. R. 2 C. A. 21. See also *Denny v. Han-*

The following are cases in which it has been held that the purchaser was entitled to rescind the contract, and was not bound to accept compensation :

Instances where purchaser was held entitled to rescind.

Where an estate was described as freehold, and it turned out to be leasehold for 4,000 years (*d*).

Where, on a sale of a leasehold house the particulars stated that the lessee was restricted from carrying on "offensive trades or the trade of a coffee-house keeper or working hatter," and it turned out that the lease prohibited not only offensive but also a great number of inoffensive trades (*e*).

Where the subject-matter of the contract was described as a "free public-house," and it turned out that the lease contained a proviso that the lessee should take all his beer from a particular brewery (*f*).

Where the property was described as seven houses on a *ground* rent lease at forty guineas per annum, and it turned out that they were let on lease at a *rack* rent of forty guineas (*g*).

Where property was sold as copyhold, and it was proved that part of it was freehold (*h*). The result would of course be the same if property put up as freehold proved to be copyhold.

Where property sold as freehold was formerly copyhold and had been enfranchised under the Copyhold Acts, which reserved the minerals to the lord of the manor (*i*).

Where a lot was described as a first-rate building plot of land, and it turned out that it was subject to a right of way of which no notice was taken in the particulars and plan (*k*).

Where the property was subject to easements

cock, L. R. 6 Ch. Ap. 1; Smith v. Land and House Property Corporation, 28 Ch. D. 7; Brewer v. Browne, 28 Ch. D. 309.

(*d*) Crewe v. Corp, 9 Ves. 368.

(*e*) Flight v. Booth, 1 Bing. N. C. 370; 4 L. J. (N. S.) C. P. 66.

(*f*) Jones v. Edney, 3 Camp. 285.

(*g*) Stewart v. Alliston, 1 Mer. 26.

(*h*) Ayler v. Cox, 16 Beav. 23.

(*i*) Upperton v. Nickolson, L. R. 6 Ch. 436.

(*k*) Dykes v. Blake, 4 Bing. N. C. 463; 7 L. J. (N. S.) C. P. 282.

materially affecting its enjoyment (*l*), or to restrictive covenants (*m*).

Where a house was described as brick-built, and it was proved to be built partly of brick and partly of timber, and some parts were composed only of lath-and-plaster (*n*).

Where the particulars described the property as containing sixty-five acres of fine oak timber trees, the average size of which approached sixty-five feet, and the size was in fact considerably below that average (*o*).

Where property was described as No. 58, on the north side of Pall Mall, and opposite Marlborough House, and it turned out that the house was in fact not in Pall Mall, but was situate behind No. 57, Pall Mall, having its entrance by a separate passage through the ground floor of No. 57 (*p*).

Where the property was described as freehold ground rents, and it turned out that some of the rents were rents covenanted to be paid by the lessees of houses for the right of using a public pleasure ground, and not freehold ground rents within the meaning of the particulars (*q*).

Where, on a sale of redeemed land-tax, it was stated to be charged on three houses, and it turned out that the whole amount was not charged on the three houses, but consisted of three smaller sums each charged on one house (*r*).

Where the purchaser reasonably gathered from the particulars that the property was free from any ground rent, and it turned out that it was liable to a ground rent of £43 (*s*).

(*l*) *Shackleton v. Sutcliffe*, 1 D. & Sm. 609.

(*m*) *Phillips v. Caldeleuch*, L. R. 4 Q. B. 159; *Cato v. Thompson*, 9 Q. B. D. 616; *Higgins and Hitchman's Contract*, 21 Ch. D. 95.

(*n*) *Powell v. Double*, MS., cited Sug. V. & P. 23.

(*o*) *Lord Brooke v. Roundthwaite*, 5 Hare, 298.

(*p*) *Stanton v. Tattersall*, 1 Sm. & Giff. 529.

(*q*) *Evans v. Robins*, 33 L. J. (N. S.) Ex. 68.

(*r*) *Cox v. Ceventon*, 31 Beav. 378.

(*s*) *Jones v. Rimmer*, 14 Ch. D. 588; *Brewer v. Browne*, 28 Ch. D. 309.

It may be stated as the result of the above cases Result of above cases. that a purchaser is entitled to rescind the contract, whether there is or is not a condition as to misdescription—(1) if the mis-statement on the part of the vendor is wilful; (2) if the effect of making the purchase complete would be to put upon him something constitutionally different from that for which he contracted; (3) if the misdescription is such that it may be reasonably supposed that, but for such misdescription, he would not have entered into the contract at all; (4) if the misdescription is of a nature not susceptible of being accurately measured in value.

It will be borne in mind that in many of the above cases the purchaser, though not bound to accept compensation, might have elected to take it, instead of having the contract rescinded altogether.

3. *Whether in any and what cases a vendor can avail himself of a condition giving him compensation for misdescriptions.*

The common condition as to misdescriptions provides for the payment of compensation to the vendor as well as to the purchaser. In determining whether in any given case the vendor can avail himself of this condition it must be considered whether the misdescription is one which in the absence of the condition would have entitled him to be relieved from the contract. When vendor can claim compensation for misdescription.

It is the duty of the vendor to describe accurately the property which he offers for sale, and he will as a general rule be bound by the description. But if through a *bonâ fide* mistake made under such circumstances as to be excusable, he inserts a description which is incorrect as to quantity or rental, or in some other important particular, and both parties supposing the description to be correct, the one agrees to give and the other to accept a price calculated on that basis, and being considerably less than would have been given and accepted if they had both known the actual state of things, equity would relieve the vendor from Equity will release a vendor when there is a bonâ fide mistake.

Condition
applies to such
cases.

the obligation of carrying out a contract different from that which both parties supposed it to be (*t*). And if in a case of this kind there is the usual condition as to misdescriptions, the vendor would be entitled to avail himself of it to this extent at least, that the purchaser would not be allowed to have the property except on the terms of his submitting to pay an increased purchase-money (*u*). But as misdescription is the vendor's fault, however excusable under the circumstances, it is apprehended that the condition could not be enforced against a purchaser who preferred to have the contract rescinded.

IV. *Conditions relating to other matters, and conditions generally.*

As to re-
tracting a
bidding.

It is usual to provide in the conditions that no person shall retract his bidding; but Lord St. Leonards, though he originally suggested the condition, doubts whether it could be enforced (*x*).

When vendor
may employ a
bidder.

If it be announced either by the particulars or publicly at the time of sale that the sale is to be without reserve, the sale is of course vitiated by a person being employed by the vendor to bid (*y*); but formerly, if a sale had been advertised generally without any statement as to its being without reserve, it was generally supposed that a vendor might, in equity though not at law, employ one person to bid, in order to prevent the estate being sold at an under value (*z*). But by the 30 & 31 Vict. c. 48, it is enacted that after the 15th July, 1867; whenever a sale by auction of *land* would be invalid at law by the employment of a puffer, the same shall be so in equity also (*a*); and it

30 & 31 Vict.
c. 48.

(*t*) *Calverley v. Williams*, 1 Ves. 210; *Baxendale v. Seale*, 19 Beav. 601.

(*u*) *Leslie v. Tompson*, 9 Hare, 268.

(*x*) Sug. V. & P. 11.

(*y*) *Thornett v. Haines*, 15 M. & W. 372; 15 L. J. Ex. 230; *Meadows v. Tanner*, 5 Mad. 34.

(*z*) *Bramley v. Alt*, 3 Ves. 620; *Conolly v. Parsons*, *ib.* 625, n.; *Smith v. Clarke*, 12 Ves. 477; *Twining v. Morrice*, 2 Bro. C. C. 326; *Woodward v. Miller*, 2 Coll. C. C. 279. But see the observations of Lord Cranworth in *Mortimer v. Bell*, L. R. 1 C. A. 10.

(*a*) Sect. 4.

is further provided that the particulars, or conditions of sale by auction of land shall state whether it will be sold without reserve or subject to a reserved price, or whether a right to bid is reserved, and that if the land is stated to be sold without reserve or to that effect it shall not be lawful for the seller to employ any person to bid, or for the auctioneer to take knowingly any bidding from such person; and that when any such sale is declared to be subject to a right for the seller to bid, the seller, or any one person on his behalf, may bid at such auction in such manner as he may think proper (b).

It is also usual on sales by auction to provide that the purchaser shall pay a deposit, which is intended as a guarantee for the performance of the contract, and also as part payment of the purchase-money, if it is completed. If the deposit is paid to the auctioneer, which is the usual practice in London, he is a stakeholder, and must retain it until completion, and he is not chargeable with interest on it, although he may have actually made a profit by its investment (c). In country sales the deposit is generally paid to the vendor's solicitor, who receives it not as a stakeholder, but as the vendor's agent, and is bound to hand it over to the vendor at once (d). Where the deposit is large, it may be prudent to provide for its investment during the interval between the sale and the completion of the purchase, and in that event the vendor will be entitled to any increase, and must bear any loss, in the value of the investment (e).

If the purchaser fails to perform the contract, by reason of his bankruptcy or otherwise, he forfeits the deposit (f). But it is usual to stipulate not only for the forfeiture of the deposit, but also that the vendor may resell and recover from the purchaser any deficiency in price on the second sale, together with the costs.

(b) Sects. 5, 6. See *Gilliatt v. Gilliatt*, L. R. 9 Eq. 60.

(c) *Harington v. Hoggart*, 1 B. & Ad. 577.

(d) *Edgell v. Day*, L. R. 1 C. P. 80.

(e) *Burroughes v. Brown*, 9 Hare, 609. See also *St. Paul v. Birmingham, &c. Railway Company*, 11 Hare, 305.

(f) *Ex parte Barrett*, L. R. 10 Ch. 512.

Under this condition, the vendor is entitled to retain the whole of the deposit, whether he resells or not, and if he resells at a loss, he can recover so much of the deficiency and costs as is not covered by the deposit (*g*). The vendor's right is the same if the condition provides for a resale and recovery of the deficiency as above, but says nothing about the deposit (*h*).

As to timber.

What is timber.

If on a sale the timber is to be paid for separately, the conditions of sale should provide for the terms on which it is to be taken by the purchaser, and should specify what trees shall be paid for as timber. Wood is not timber unless it is of twenty years' growth; the term *timber* includes oak, elm, and ash, and by local custom, birch, beech, and other trees, and sometimes pollards (*i*).

As to apportionment of rent on sale in lots.

When a property which is subject to a lease at an entire rent is sold in lots, or a part only of such property is sold, provision must be made by the conditions for the apportionment of the rent, and if the tenant's concurrence in the apportionment cannot be obtained, the purchaser should be precluded from taking any objection on that account.

Written or printed conditions cannot be verbally varied.

It may be observed that written or printed conditions of sale cannot be verbally varied at the time of sale by the auctioneer, and parol evidence will not be admitted in equity on the part of the plaintiff to vary the written contract, although the purchaser agrees to abide by the conditions and declarations made at the sale (*k*). But any personal information which the purchaser may have received would be a ground for receiving parol evidence, and using the same as a defence against a specific performance (*l*). Fraud, mistake, or surprise, are respectively grounds for receiving parol evidence in defence to an action for

Where parol evidence will be received.

(*g*) *Ockenden v. Henly*, El. Bl. & El. 485; 27 L. J. Q. B. 361; *Soper v. Arnold*, 37 Ch. D. 96; *Kingdon v. Kirk*, 37 Ch. D. 141.

(*h*) *Howe v. Smith*, 27 Ch. D. 89.

(*i*) *Dart*, 149, 6th Ed.; *Duke of Chandos v. Talbot*, 2 P. Wms. 606; *Aubrey v. Fisher*, 10 East, 446. As to what are saleable underwoods,

see *King v. Inhabitants of Ferrybridge*, 1 B. & C. 375.

(*k*) *Gunnis v. Erhart*, 1 H. Bl. 289; *Powell v. Edmunds*, 12 East, 6; *Higginson v. Clowes*, 15 Ves. 516.

(*l*) *Ogilvie v. Foljambe*, 3 Mer. 65; *Clowes v. Higginson*, 1 V. & B. 524.

specific performance, but if none of these circumstances exist, evidence cannot be offered to contradict, explain, or vary the written contract (*m*). The particulars of sale should give an accurate description of the property, and no reliance should be placed by the vendor on statements made at the sale (*n*).

Hitherto when a sale has been made by trustees subject to unnecessary or improperly depreciatory conditions, the equitable rule has been that the *cestui que trust* could set aside the sale so long as any part of the purchase-money remained unpaid, as against a purchaser not having notice of the impropriety of the conditions. They could, however, sell subject to a condition enabling them to rescind the contract in case objections should be taken to the title which they might be unable to remove (*o*), or stipulating that the title should commence with a deed of very recent date, in order to save the expense which would be incurred in carrying it further back (*p*). This rule is now altered by sect. 3 of the Trustee Act, 1888 (*q*), which provides, first, that no sale made by a trustee after the commencement of the Act shall be impeached by any *cestui que trust* on the ground that any of the conditions are unnecessarily depreciatory, unless it shall appear that the consideration for the sale was thereby rendered inadequate; secondly, that no such sale shall, after the execution of the conveyance, be impeached as against the purchaser on the ground aforesaid, unless it shall appear that he was in collusion with the trustee at the time when the contract was made; and, thirdly, that upon any such sale no purchaser shall be entitled to make any objection to the title on the ground aforesaid.

Conditions subject to which trustees may sell.

A vendor or purchaser of real or leasehold estate, or their representatives respectively, may at any time apply in a summary way to a Judge in Chambers, in respect of any requisitions or objections, or claim for

Vendor or purchaser can obtain opinion of Judge in Chambers.

(*m*) *Manser v. Back*, 6 Hare, 443. *Falkner v. Eq. Rev. Ins. Soc.*, 4
 (*n*) *Torrance v. Bolton*, L. R. 8 *Drew*, 352.
 Ch. 118. (*p*) *Dunn v. Flood*, 25 Ch. D. 600.
 (*o*) *Hobson v. Bell*, 2 Beav. 17; (*q*) 51 & 52 Vict. c. 59.

compensation, or any other question arising out of or connected with the contract (not being a question affecting the validity of the contract), and obtain the decision of the Judge thereon, and also as to the costs of the application (*q*).

Construction of sect. 9 of Vendor and Purchaser Act.

Under this section the Judge has power to determine the validity of a notice to rescind the contract for sale (*r*), or, on declaring that a good title cannot be made, to decide that the deposit is to be paid with interest, and that the vendor shall pay the costs of investigating the title, or that any other things shall be done which are the natural consequence of the decision (*s*); but he has no jurisdiction under this section to decide any point that does not concern the purchaser (*t*).

What conditions necessary where title is registered under Land Transfer Act.

When the title to land has been registered under the "Land Transfer Act, 1875," no special condition will be necessary if the registration is with an absolute title. But if the registration is with a possessory or qualified title only, *i. e.* without prejudice to estates arising before the date of registration, or before a certain specified date, the purchaser will be entitled to carry the investigation back for forty years according to the ordinary rule, and to preclude him from so doing a special condition will be necessary.

(*q*) Vendor and Purchaser Act, 1874, sect. 9. See *In re Burroughs*, 5 Ch. D. 601.

(*r*) *In re Jackson and Woodburn's Contract*, 37 Ch. D. p. 44.

(*s*) *In re Yielding and Westbrook*,

31 Ch. D. 344; *In re Hargreaves and Thompson's Contract*, 32 Ch. D. 454; *In re Higgins and Hutchins' Contract*, 21 Ch. D. 95.

(*t*) *In re Tippetts and Newbold's Contract*, 37 Ch. D. 444.

No. I.

CONDITIONS of SALE of FREEHOLD or COPYHOLD PROPERTY in ONE LOT.

OF FREEHOLDS
OR COPYHOLDS
IN ONE LOT.

I. THE highest bidder shall be the purchaser, and if any dispute shall arise between two or more bidders the property shall be put up again at the last undisputed bidding. No person shall advance at each bidding less than £—— [or the sum which shall be fixed by the auctioneer at the time of the sale], and no bidding shall be retracted. The vendor reserves the right to bid.

Highest bidder
to be pur-
chaser, and as
to advance on
biddings.

II. THE purchaser shall immediately after the sale pay to the auctioneer [or to Mr. —, the vendor's solicitor,] a deposit of £—— per cent. upon the amount of his purchase-money, and sign an agreement to complete the purchase according to these conditions.

Deposit.

[IIA. IN addition to the amount of his bidding at the sale, the purchaser shall pay for all timber and timber-like trees, tellers, pollards, and saplings on the property, down to the value of one shilling per stick inclusive, at a valuation to be made in manner following, (that is to say):—Each party shall appoint a valuer, and give notice thereof by writing to the other party within fourteen days from the day of the sale. The valuers thus appointed shall, before they proceed to act, appoint by writing an umpire, and the two valuers or (if they disagree) their umpire shall make the valuation. If either party shall neglect to appoint a valuer or to give notice thereof to the other party for the space aforesaid, the valuer appointed by the other party shall make a final valuation alone (u). In the following conditions the expression "the remainder of the purchase-money" includes the amount of the aforesaid valuation.]

Timber to be
paid for at a
valuation.

III. THE remainder of the purchase-money shall be paid and the purchase shall be completed on the — day of — next

As to the com-
pletion of the
purchase.

(u) Sometimes the timber is valued before the sale, in which case the amount of the valuation is stated in the particulars, and the condition will then be as follows:—

In addition to the amount of his bidding at the sale, the purchaser shall pay for the timber and other trees on the property the amount stated in the particulars.

**OF FREEHOLDS
OR COPYHOLDS
IN ONE LOT.**

at the office of Mr. — (the vendor's solicitor), and if from any cause whatever the purchase shall not be completed on that day, the purchaser shall pay to the vendor interest after the rate of £5 per cent. per annum on the remainder of the purchase-money from that day until the completion of the purchase. The purchaser shall be entitled to the possession [or the receipt of the rents and profits] of the property from the said — day of — next, all outgoing up to that day being cleared by the vendor, and all current rents and outgoing shall if necessary be apportioned for the purposes of this condition (v).

**Commence-
ment of title.**

IV. THE title shall commence with an indenture, dated, &c., being a conveyance on a sale [or a mortgage, or a voluntary settlement, or as the case may be] (x).

Identity.

V. THE purchaser shall not require any evidence of the identity of the property as described in the particulars with the property described in the abstracted documents, other than such as is afforded by a comparison of the descriptions in the particulars and documents respectively, and a statutory declaration, which will be furnished to him if he requires it, at his own expense, that the property has been held consistently with the title shown by the abstract during the last twenty years.

**Tenancies and
easements.**

VI. THE property is sold subject to existing tenancies, and to all easements (y) (if any) affecting the same.

Outgoings.

(v) Under a condition in this form as to "outgoings" on the sale of leaseholds an apportioned part of the current rent from the last quarter day up to the time for delivering up possession must be paid by the vendor. *Lawes v. Gibson*, L. R. 1 Eq. 135. See also *Midgely v. Coppock*, 4 Ex. Div. 309.

**Recitals in
documents to
be evidence.**

(x) The nature of the deed should be stated, if less than forty years old, see p. 3, *supra*. Insert after the 4th condition any special stipulations which the state of the title may require. For forms of such conditions, see *infra*. The conditions which were formerly usually inserted, making recitals in deeds twenty years old evidence of the facts recited, and throwing on the purchaser the expense of producing deeds and procuring other evidence not in the vendor's possession, are no longer necessary, these matters being now provided for by statute. See the Vendor and Purchaser Act, 1874, s. 2, rule 2, and the Conveyancing Act, 1881, s. 3, sub-s. (6). As to the construction which has been put upon the clause in the first-mentioned Act with reference to recitals, see *Bolton v. London School Board*, 7 Ch. D. 766, which decided that a recital in a conveyance only twenty-four years old, to the effect that the vendor was seised in fee simple, precluded the purchaser from requiring the vendor to carry the title further back. It is submitted that this decision cannot be sustained.

(y) Add here if necessary, "quit rents and other incidents of tenure." The above condition will not exempt the vendor from the obligation of disclosing any easements of which he is aware. See p. 24, *supra*.

VII. THE description of the property in the particulars is believed and shall be deemed to be correct, and no objection shall be made or compensation claimed on account of an error of description as to quantity [*or measurements*], or otherwise, should any such be found (z). OF FREEHOLDS
OR COPTHOLDS
IN ONE LOT.

(*Or the following.*)

VIIA. THE quantities of the several lands [*or the measurements of the property*] are believed and shall be deemed to be correctly stated in the particulars, and no objection shall be made or compensation claimed on account of an error in quantity (z). If any other error or omission in the particulars shall be discovered before the completion of the purchase (a), the same shall not annul the sale; but a fair compensation shall be made in respect thereof to or by the purchaser, as the case may require, the amount to be settled, in case of difference, by two referees, one to be appointed by each party, or by an umpire to be appointed by the two referees before they proceed in the reference. Errors of
description.

VIII. ALL objections and requisitions in respect of the title, or the abstract, or particulars, or anything appearing therein (b) respectively, shall be stated in writing and sent to the vendor's solicitor within — days from the receipt of the abstract, and all objections and requisitions not sent within that time shall be considered to be waived; and for the purpose of any objection or requisition the abstract shall be deemed perfect if it supplies the information suggesting the same, although otherwise defective. If any objection or requisition shall be made and insisted on which the vendor shall be unable or unwilling to remove or Time for mak-
ing requis-
itions,

and power to
rescind in
certain cases.

(z) This condition applies only to physical or patent errors of description, nor would it entitle the vendor to insist on specific performance, without compensation, in the case of a serious misdescription by which the purchaser is misled. See *Re Terry and White's Contract*, 32 C. D. 14. Condition
only applies
to physical or
patent errors.

(a) After several conflicting decisions it seems to be now settled that compensation may be claimed under a condition as to misdescriptions after completion, unless the contrary is expressed. See *Bos v. Helsham*, L. R. 2 Exch. 72; *In re Turner v. Skelton*, 13 Ch. D. 130; *Jones v. Clifford*, 3 Ch. D. 779; *Palmer v. Johnson*, 13 Q. B. D. 351; *Perrian v. Perrian*, W. N. 1884, p. 5; *contra*, *Manson v. Thacker*, 7 Ch. D. 620; *Allen v. Richardson*, 13 Ch. D. 524; *Joliffe v. Baker*, 11 Q. B. D. 255. Compensation
may be
claimed after
conveyance.

(b) These words include a claim to compensation for a misdescription where the form No. VII. is used. See *Terry and White's Contract*, *ubi suprà*.

OF FREEHOLDS
OR COPYHOLDS
IN ONE LOT.

comply with, the vendor shall be at liberty (notwithstanding any intermediate negotiation on the subject of such objection or requisition or attempts to remove or comply with the same), by notice in writing to the purchaser, to rescind the sale; in which case the purchaser shall receive back the deposit without interest or costs, and shall return to the vendor the abstract of title and any other papers in his possession belonging to the vendor. But the purchaser may, within seven days after receiving the notice to rescind, withdraw the objection or requisition, in which case the notice to rescind shall be deemed to be withdrawn also.

Vendor to
make assur-
ances.

IX. UPON payment of the residue of the purchase-money at the time and place aforesaid, the vendor (c) will make and execute to the purchaser a proper assurance of the property, such assurance to be prepared by and at the expense of the purchaser, and to be left by him for execution at the office aforesaid, not less than seven days before the said — day of —; [and the getting in of all outstanding estates, terms, and interests (if any) shall be at the expense of the purchaser (d)].

(If any of the deeds are retained by the vendor, the following may be added.)

The assurance will include the usual statutory acknowledgment and undertaking for safe custody by the vendor in respect of all documents retained by him. [*If the vendor is a trustee.*—The assurance will include the usual statutory acknowledgment by the vendor in respect of all documents retained by him, but not any undertaking for their safe custody.]

Vendor's
power to resell
on purchaser's
default.

X. If the purchaser shall fail to comply with these conditions, his deposit money shall be forfeited to the vendor, who shall be at liberty to proceed to another sale either by public auction or private contract, with or without notice to the purchaser at the present sale, and the deficiency, if any, occasioned by such second sale, together with all charges attending the same, shall immediately after such sale be made good by the defaulter at this present sale, and in case of non-payment of the same, the whole shall be recoverable by the vendor as and for

(c) Add, if it is the case, "who is a trustee for sale."

(d) This will be inserted where the state of the title requires it.

liquidated damages, and it shall not be necessary for the vendor to tender a conveyance.

OF FREEHOLDS
OR COPYHOLDS
IN ONE LOT.

Memorandum to be annexed to the Particulars and Conditions.

MEMORANDUM. AT THE SALE by auction made this day, of the property described in the above particulars, A. B. of — was the highest bidder for, and was declared the purchaser of the said property, at the price of £—; and the said A. B. has paid to C. D., as agent for and on behalf of —, (f) the vendor, the sum of £— by way of deposit, and in part payment of the purchase-money; and he hereby agrees to complete the purchase, according to the above conditions, and the said C. D., as the vendor's agent, hereby confirms the said sale, and acknowledges the receipt of the said deposit.

C. D. (*auctioneer, or vendor's solicitor*) for the vendor.

A. B. (*purchaser*).

No. II.

CONDITIONS of SALE of a LEASEHOLD HOUSE [and TENANT'S fixtures] in ONE LOT [the fixtures to be taken at a valuation].

OF LEASEHOLDS
IN ONE LOT.

I., II. (*As in Precedent No. I., supra*, p. 37.)

[IIA. IN addition to the amount of his bidding at the sale the purchaser shall pay for the tenant's fixtures in and about the premises at a valuation to be made in manner following (that is to say): the vendor shall appoint one valuer and the purchaser shall appoint another valuer, and each party shall make such appointment by writing and give notice thereof to the other party within fourteen days from the day of sale. The valuers thus appointed shall, before they proceed to act, appoint by

Tenant's fixtures.

(f) The name of the vendor should be inserted in the contract before it is signed.

OF LEASEHOLDS
IN ONE LOT.

writing an umpire, and the two valuers, or if they disagree, their umpire, shall make the valuation. If either party shall neglect to appoint a valuer, or to give notice thereof to the other party for the space aforesaid, the valuer appointed by the other party shall make a final valuation alone. In the following conditions the expression "the remainder of the purchase-money" includes the amount of the aforesaid valuation.]

As to comple-
tion of the
purchase.

III. THE remainder of the purchase-money shall be paid, and the purchase completed on the — day of — next, at the office of Mr. —, the vendor's solicitor; and if, from any cause whatever, the purchase shall not be completed on that day, the purchaser shall pay to the vendor interest after the rate of £5 per cent. per annum on the remainder of the purchase-money from that day until the completion of the purchase. The purchaser shall be entitled to the possession [or the receipt of the rents and profits] of the property from the said — day of — next, and shall from the same day pay all outgoing (including the rent reserved by the lease). All current rents and outgoing shall, if necessary, be apportioned for the purpose of this condition.

Commence-
ment of title.

IV. THE title shall commence with the lease under which the vendor holds, which lease, or a copy thereof, will be produced at the time of sale, and may be inspected the day before the sale at the office of the vendor's solicitor, and the purchaser shall be deemed to have notice of all its contents. The production of the receipt for the last payment of rent which shall have become due under the lease shall be deemed conclusive evidence that all the covenants and conditions in the lease have been observed and performed up to the day of completion, or that all breaches thereof (if any) have been waived.

If the property is held by an underlease, and the vendor cannot procure the production of the superior lease.

Commence-
ment of title
when property
held by under-
lease.

IVA. THE title shall commence with the underlease under which the vendor holds, which underlease, or a copy thereof, will be produced at the sale, and may be inspected the day before the sale, at the office of the vendor's solicitor; but the purchaser shall not require the production of the superior lease.

(Or if the vendor can produce the superior lease.)

OF LEASEHOLDS
IN ONE LOT.

Another form.

IVB. THE title shall commence with the underlease under which the vendor holds, which underlease, or a copy thereof, and also a copy of the superior lease, will be produced at the sale, and may be inspected the day before the sale at the office of the vendor's solicitor.

(Remaining conditions as in Precedent No. I., so far as they are applicable.)

No. III.

CONDITIONS of SALE of FREEHOLDS where the VENDOR has a REGISTERED TITLE under the LAND TRANSFER ACT, 1875.

OF FREEHOLDS
WITH
REGISTERED
TITLE.

I., II., III. *(The same as in Precedent No. I.)*

(If the vendor is the first registered proprietor with a possessory title only.)

IV. THE vendor is the first registered proprietor with a possessory title only of the premises offered for sale, the date of registration being the — day of — 18—. No evidence of title prior to the registration shall be required, and the purchaser shall assume that, at the date of registration, no estate, right, or interest adverse to or in derogation of the vendor's title was subsisting or capable of arising.

Where vendor is first registered proprietor with a possessory title only.

(Or if the vendor is a transferee of the first registered proprietor.)

IVA. THE vendor is the registered proprietor with a possessory title only of the premises offered for sale by transfer from the first registered proprietor, the date of such first registration being the — day of — 18—. No evidence of title prior to the first registration shall be required, and the purchaser shall assume that at the date of such registration, no estate, right, or interest adverse to or in derogation of the title of the first registered proprietor was subsisting or capable of arising.

Where vendor is transferee of first registered proprietor.

OF FREEHOLDS
WITH
REGISTERED
TITLE.

Where vendor
has a qualified
title.

(Or if the vendor is registered proprietor with a qualified title.)

IVB. THE vendor is the registered proprietor with a qualified title (estates, rights, and interests arising before the — day of — 18—, being excepted from the effect of registration). No evidence of title prior to the said — day of — 18—, shall be required, and the purchaser shall assume that no estate, right, or interest adverse to or in derogation of the registered title was subsisting or capable of arising on the said — day of — 18—.

(If the vendor has an absolute registered title no special condition is necessary.)

Subject to
tenancies,
easements, &c.

V. THE property is sold subject to the existing tenancies, and to all easements, quit rents, and other incidents of tenure, if any, affecting the same.

VI., VII. (Conditions as to errors of description and vendor's power to resell in case of purchaser's default, as in Precedent No. I., *supra*, pp. 39, 40.)

No. IV.

OF LEASEHOLDS
WITH
REGISTERED
TITLE.

CONDITIONS of SALE of LEASEHOLDS where the vendor has a REGISTERED TITLE under the LAND TRANSFER ACT, 1875.

I., II., III. (The same as in Precedent No. I.)

Last receipt of
rent to be sufficient evidence
of performance of covenants.

IV. THE vendor is the registered proprietor of the leasehold premises offered for sale, but without any declaration of the title of the lessor to grant the lease. The receipt for the last payment of rent which shall have become due under the lease shall be accepted by the purchaser as conclusive evidence that all the covenants and conditions contained in the lease, and to be performed by the lessee, have been performed up to the completion of the purchase. The nature of such covenants and conditions may be ascertained by an inspection of an office copy of the lease, which will be produced at the time of the sale.

V., VI. (Errors in particulars, and power to vendor to resell, see Precedent No. I., *supra*, pp. 39, 40.)

No. V.

CONDITIONS of SALE of PROPERTY in LOTS.

OF PROPERTY
IN LOTS.

I. THE highest bidder shall be the purchaser; and if any dispute shall arise between two or more bidders, the lot in dispute shall be put up again at the last undisputed bidding. No person shall advance at each bidding less than £—— [or, the sum to be fixed by the auctioneer at the time of sale], and no bidding shall be retracted. The vendor reserves the right to bid.

Highest bidder to be purchaser, and as to advance on biddings.

II. EVERY purchaser shall, immediately after the sale, pay to the auctioneer [or, to Mr. ——, the vendor's solicitor], a deposit of £—— per cent. on the amount of his purchase-money, and sign an agreement to complete his purchase, according to these conditions.

Deposit.

[IIA. IN addition to the amount of his bidding at the sale, the purchaser of each lot shall pay for all timber and timber-like trees, pollards and saplings on such lot, down to the value of 1s. per stick inclusive, at a valuation to be made in manner following (that is to say): each party shall appoint a valuer, and give notice thereof by writing to the other party within fourteen days from the day of sale. The valuers thus appointed shall, before they proceed to act, appoint by writing an umpire, and the two valuers, or (if they disagree) their umpire, shall make the valuation. If either party shall neglect to appoint a valuer, or to give notice thereof to the other party for the space aforesaid, the valuer appointed by the other party shall make a final valuation alone. In the following conditions the expression "the remainder of the purchase-money" includes the amount of the aforesaid valuation.]

Timber to be paid for at a valuation.

III. THE remainder of the purchase-money of each lot shall be paid, and the purchase thereof shall be completed on the —— day of —— next, at the office of the said ——, and if from any cause whatever the purchase of any lot shall not be completed on that day, the purchaser thereof shall pay to the vendor interest after the rate of £5 per cent. per annum on the remainder of the purchase-money from that day until the completion of the purchase. The purchaser of each lot shall be

As to the completion of the purchase.

**OF PROPERTY
IN LOTS.** entitled to the possession [or the receipt of the rents and profits] of the lot purchased by him from the said — day of — next, all outgoings up to that day being cleared by the vendor, and all current rents and outgoings shall be apportioned for the purpose of this condition.

Commencement of title. IV. THE title (*f*) shall commence, as to lot 1, with, &c.; as to lot 2, with, &c. (*and so on as to all the lots*) (*g*).

Identity. V. No purchaser shall require any other evidence of the identity of the lot purchased by him with any of the property described in the abstracted documents than such as is afforded by a comparison of the descriptions in those documents and in the particulars, and a statutory declaration, which will be furnished to him if he requires it at his own expense, that the property has been held consistently with the title shown by the abstract for the last twenty years.

Easements, and apportionment of rent. VI. THE several lots are sold subject to the existing tenancies, and all easements, quit rents, and other incidents of tenure (if any) affecting the same. And where two or more lots are included in one tenancy, the rent shall be apportioned between them as specified in the particulars, and the tenant shall not be required to concur in or consent to such apportionment.

Errors in particulars. VII. THE description of the several lots in the particulars is believed and shall be deemed to be correct, and no objection shall be made or compensation claimed for an error of description as to quantity or otherwise should any such be found (*h*).

(*Or the following.*)

Another form. VIIA. THE quantities of the lands forming [or the measurements of] the several lots are believed, and shall be deemed, to be correctly stated in the particulars, and no objection shall be made or compensation claimed on account of an error in quantity

A purchaser of several lots entitled to one abstract only. (*f*) By sect. 3, sub-sect. (7) of the Conveyancing Act, 1881, it is provided that on a sale of any property in lots, a purchaser of two or more lots held wholly or partly under the same title shall not have a right to more than one abstract of the common title, except at his own expense.

(*g*) Insert after the 4th condition any other special stipulations which the state of the title may require. For forms of special conditions, see *infra*.

(*h*) See *supra*, p. 39, notes (*z*), (*a*).

if any such be found. If any other error or omission in the particulars shall be discovered before the completion of the purchase, a fair compensation shall be made in respect thereof to or by the purchaser as the case may require; the amount to be settled, in case of difference, by two referees, one to be appointed by each party, or by an umpire to be appointed by the two referees before they proceed in the reference.

OF PROPERTY
IN LOTS.

VIII. ALL objections and requisitions in respect of the title or the abstract, or the particulars or anything appearing therein, shall be stated in writing, and sent to the vendor's solicitor within — days from the delivery of the abstract; and all objections and requisitions not sent within that time shall be considered to be waived, and for the purpose of any objection or requisition the abstract shall be deemed perfect if it supplies the information suggesting the same, although otherwise defective.

Time for
making re-
quisitions,

If any objection or requisition shall be made and insisted on which the vendor shall be unable or unwilling to remove or comply with, the vendor shall be at liberty (notwithstanding any intermediate negotiation in respect thereof, or attempts to remove or comply with the same), by notice in writing to the purchaser by whom such objection or requisition shall be made, to rescind the sale: in which case the purchaser shall receive back the deposit without interest or costs, and shall return the abstract of title and any other papers in his possession belonging to the vendor, but the purchaser may, within seven days after receiving the notice to rescind, withdraw the objection or requisition, in which case the notice to rescind shall be deemed to be withdrawn also.

and power to
vendor to
rescind in cer-
tain cases.

IX. UPON payment of the residue of the purchase-money at the time and place aforesaid, the vendor (i) shall make and execute to the purchasers proper assurances of their respective lots, such assurances to be prepared by and at the expense of the purchasers, and to be left by them respectively for execution at the office aforesaid, not less than seven days before the said — day of — next, [and the getting in of all outstanding estates, terms, and interests (if any) shall be at the expense of any purchaser requiring the same].

Vendor to
make assur-
ances.

(i) Add, if it is the case, who is a trustee for sale.

OF PROPERTY
IN LOTS.Custody of
deeds.

X. Documents of title in the vendor's possession relating to several lots sold to different purchasers and to no other property of the vendor, will be delivered to the purchaser whose purchase-money is the largest, after the sale of all the lots has been completed, and will in the meantime be retained by the vendor. The vendor will, as to all documents retained by him, give to every purchaser of property to which the same relate the usual statutory acknowledgment and undertaking for safe custody in respect thereof; (or, if the vendor is a trustee, the usual statutory acknowledgment in respect thereof, but not any undertaking for their safe custody) (k).

Power of
vendor to re-
sell in case of
default by
purchaser.

XI. If any purchaser shall fail to comply with these conditions, his deposit money shall be forfeited to the vendor, who shall be at liberty to proceed to another sale, either by public auction or private contract, with or without notice to the purchaser at the present sale, and the deficiency (if any) occasioned by such second sale, together with all charges attending the same, shall, immediately after such sale, be made good by the defaulter at this present sale; and, in case of nonpayment of the same, the whole shall be recoverable by the vendor, as and for liquidated damages; and it shall not be necessary for the vendor to tender a conveyance.

Memorandum to be annexed to the Particulars and Conditions.

MEMORANDUM. AT THE SALE by auction, made this day, of the property comprised in the above particulars, A. B., of —, was the highest bidder for, and was declared the purchaser of lot —, at the price of £—, and the said A. B. has paid to C. D., as agent for and on behalf of — (l), the

(k) See *supra*, p. 20. It will be observed that in the above condition there is no stipulation that the purchaser to whom deeds are delivered shall give an acknowledgment. It is considered that this is unnecessary. The vendor will give an acknowledgment, &c., to each purchaser as he completes, and the liability under it will be transferred to the purchaser to whom the deeds are ultimately delivered by virtue of sect. 9, sub-sect. 2 of the Act.

(l) The name of the vendor should be inserted in the contract before it is signed.

vendor, the sum of — by way of deposit, and in part payment of the purchase-money; and he hereby agrees to complete the purchase according to the above conditions: and the said C. D., as the vendor's agent, hereby confirms the said sale and acknowledges the receipt of the said deposit.

OF PROPERTY
IN LOTS.

C. D. (*auctioneer, or vendor's solicitor*)
for the vendor.

A. B. (*purchaser*).

No. VI.

CONDITIONS of SALE of a LARGE ESTATE, comprising
FREEHOLDS, COPYHOLDS, and LEASEHOLDS, in LOTS, the
VENDORS being TRUSTEES.

OF FREEHOLDS,
COPYHOLDS,
AND LEASE-
HOLDS IN LOTS.

I. THE highest bidder shall be the purchaser, and if any dispute shall arise as to the last or best bidder, the lot in dispute shall be put up again. No person shall at any bidding advance less than £ — [or, the sum to be fixed by the auctioneer at the time of the sale], or retract his bidding. The vendors reserve the right to bid.

Biddings.

II. EVERY purchaser shall, immediately after the sale, pay a deposit of £ — per cent. in part of his purchase-money, and sign an agreement to pay the remainder and complete his purchase according to these conditions.

Payment of
purchase-
money, and
completion of
purchase.

IIA., III. (*As in Precedent No. V., supra, p. 45.*)

IV. THE vendors will deliver to every purchaser, whose purchase-money (exclusive of the value of the timber) shall amount to £500 or upwards, or to his solicitor, an abstract of title to the lot or lots purchased by him. No purchaser whose purchase-money (exclusive as aforesaid) shall be less than £500, shall be entitled to an abstract at the vendor's expense, but he may have an abstract at his own expense, and may inspect at the office of — a general abstract of title, comprising the lot or lots purchased by him.

Delivery of
abstract.

V. The title to the several lots shall commence as follows: [Here insert such special conditions as the state of the title may require. See *infra*.]

Commence-
ment of title.

**OF FREEHOLDS,
COPYHOLDS,
AND LEASE-
HOLDS IN LOTS.**

Condition as
to leaseholds.

VI. As to such of the lots as are of leasehold tenure, no purchaser shall require the production of any lease or leases prior to the now existing lease thereof, or any copy of such prior lease or leases, the same having been from time to time surrendered to the lessors for the purposes of renewal. The existing lease or a copy thereof will be produced at the sale, and may be inspected at any time before the sale at the office of the vendor's solicitors, and the purchaser shall be deemed to have notice of all its contents. The production of the receipt for the last payment of rent which shall have become due under the lease shall be deemed conclusive evidence that all the covenants and conditions in the lease have been observed and performed up to the day of completion, or that all breaches thereof (if any) have been waived (*m*).

(*Remaining conditions as in last Precedent.*)

No. VII.

**OF BUILDING
ESTATE SOLD
IN LOTS.**

**CONDITIONS OF SALE of a BUILDING ESTATE SOLD IN
Lots (*n*).**

I. to IV. (*The same as in Precedent No. V. pp. 45, 46, omitting in the 3rd Condition from "all outgoing" to the end.*)

V., VI. (*Time for making requisitions and power to rescind, and vendor to make assurances, supra, p. 47.*)

VII. The several lots are sold, subject to the following conditions as to building and otherwise, (namely), Every purchaser (*o*) shall within one calendar month after the com-

Time for
making re-
quisitions.

Lots sold
subject to
following con-
ditions as to
building, &c.

Apportion-
ment of ground
rent, &c.

Conditions on
sale of build-
ing plots.

(*m*) Where leasehold property held under one lease is sold in lots, conditions will have to be inserted as to the apportionment of the ground rent, and for mutual indemnity as regards the lessee's covenants. For forms of such conditions, see Nos. 5, 6, and 7, *infra*, p. 70.

(*n*) On a sale of building plots, the conditions as to building, &c., may be either inserted in the conveyance to each purchaser, or embodied in a general deed of covenants to be executed by all the purchasers. The above precedent provides for either plan. Sometimes it is intended that the covenants shall be mutually enforceable by the several purchasers, *inter se*, and that for this purpose the vendor shall, as regards an unsold lot, stand in the place of a purchaser, and sometimes that the covenant shall be enforceable by the vendor only, so that he may be able to release or dispense with it if he thinks fit. Both alternatives are provided for in the above Precedent.

(*o*) The above are given as specimens of conditions; they will of course be varied according to the instructions.

pletion of his purchase, erect and for ever afterwards maintain a good and sufficient fence on that side of the lot purchased by him which is marked T on the plan annexed to the particulars. (2.) No building or erection shall be set up on any lot nearer to the road in front thereof than is indicated by the line marked on the plan "building line." (3.) No building of any kind other than private dwelling houses with appropriate offices and outbuildings to be appurtenant thereto and occupied therewith, shall be erected on any lot, and no trade or business of any kind shall be carried on upon any part of any lot. (4.) No more than two houses shall be erected on any one lot, and every house shall be either detached or semi-detached, and the sum expended on the erection of each house shall not be less than £—— for a detached house, or £—— for a pair of semi-detached houses. (5.) The purchaser of each lot shall pay a proportionate part of the expense of keeping in repair the road in front thereof according to the extent of the frontage until the road shall be taken to by the Local Board or other public authority, such proportion to be determined in case of difference by the vendor's surveyor.

OF BUILDING
ESTATE SOLD
IN LOTS.

VIII. Every purchaser shall by the deed of conveyance covenant with the vendor to observe the above conditions so far as the same apply to the lot purchased by him, and the covenant shall be so framed that the burden thereof shall run with the land as far as may be, but the covenantor shall be personally liable thereunder so long only as he is owner of the land.

Each purchaser to covenant with vendor to observe conditions.

or

A deed has been prepared (a draft of which may be seen at the office of the vendor's solicitors, on any day before the sale) containing covenants by the several purchasers to observe the aforesaid conditions so far as the same are applicable to the several lots purchased by them respectively [and a similar covenant by the vendor as regards any lot or lots not sold], the covenants being so framed as to bind the covenantors personally so long only as they shall remain owners of the land in respect whereof the same are entered into. Every purchaser shall execute the said deed on the completion of his purchase.

Alternative condition. The several purchasers to execute deed containing covenants by them to observe conditions.

IX. All documents of title in the vendor's possession and also the deed of covenant to be executed pursuant to the last condition will be retained by the vendor, who will give to every

Vendor will retain documents, and give acknowledgment and

OF BUILDING
ESTATE SOLD
IN LOTS.

undertaking
as to the same.

purchaser a statutory acknowledgment of his right to production and delivery of copies thereof, and an undertaking for the safe custody thereof [and a notice of the said deed of covenant shall be endorsed on one of the principal title deeds retained by the vendor].

(Power to vendor to resell in case of default, and memorandum to be annexed to particulars and conditions, supra, pp. 47, 48.)

No. VIII.

OF REVER-
SIONARY
INTERESTS,
POLICIES,
ANNUITIES, &c.

Highest
bidder.
Advance.

CONDITIONS of SALE as to REVERSIONARY INTERESTS in PERSONALTY, POLICIES, ANNUITIES, LIFE INTERESTS, &c.

I. THE highest bidder shall be the purchaser, and if any dispute shall arise between two or more bidders, the lot in dispute shall be put up again at the last undisputed bidding. No person shall advance less than £—— at each bidding, and no bidding shall be retracted. The vendor reserves the right to bid.

Deposit.

II. EVERY purchaser shall, immediately after the sale, pay into the hands of the auctioneer a deposit of £—— per cent. in part of his purchase-money, and sign an agreement to pay the remainder, and complete the purchase according to these conditions on the —— day of —— next.

Completion of
purchase.

III. THE purchase of each lot shall be completed on the —— day of —— next, and if from any cause whatever any purchase shall not be completed on that day, the purchaser thereof shall pay interest on the remainder of the purchase-money after the rate of £5 per cent. per annum from that day until the completion of the purchase.

Time for
sending re-
quisitions.

IV. EVERY purchaser shall make all objections and requisitions (if any) in respect of the title or the particulars, or any thing appearing therein as to the lot or lots purchased by him, and send the same to the office of Mr. ——, within —— days from the delivery of the abstract; and all objections or requisitions which shall not be made within the time

above specified shall be taken to be waived, and for the purpose of any objection or requisition the abstract shall be deemed perfect if it supplies the information suggesting the same, although otherwise defective; and in case any purchaser shall make any objection or requisition which the vendor shall be unable or unwilling to remove or comply with, the vendor shall be at liberty, notwithstanding any intermediate negotiation on the subject of such objection or requisition or attempts to remove or comply with the same, by notice in writing to the purchaser, by whom such objection or requisition shall be made, to rescind the sale: in which case the purchaser shall receive back the deposit without interest or costs, and shall return to the vendor the abstract of title and all other papers in his possession belonging to the vendor.

OF REVER-
SIONARY
INTERESTS,
POLICIES,
ANNUITIES, &c.

V. UPON payment of the remainder of the purchase-money at the time and place above mentioned, the vendor shall execute proper assignments and assurances to the several purchasers of the lots purchased by them respectively; such assignments and assurances to be prepared by and at the expense of the purchasers, and to be left by them at least — days previous to the said — day of — next, at the office aforesaid, for execution.

Preparation
and execution
of assurance.

VI. THE purchasers, on payment of the remainder of the purchase-money, agreeably to the third condition, shall be entitled to all advantages on the reversions and policies from the hour of sale, and to the current half-year's dividends, or the interest on annuities, life interests, &c.; and all premiums on policies falling due or becoming payable between the day of sale and the completion of the purchase are to be paid by the several purchasers thereof.

Reversions,
policies,
annuities, &c.

VII. THE production of the receipts for the premiums last due on the said policies of assurance shall be deemed sufficient evidence that the said policies are in full force at the time of the completion of the purchase, and the purchaser shall not require any evidence of the ages of the lives thereby assured, or that such ages have been proved to the satisfaction of the assurance office, or any evidence in support of the statements on which the said policies were respectively granted.

Production of
receipts for
premiums last
due to be
evidence.

VIII. THE title to lot — shall commence with the will of A. B., late of —, widow, under which the legacy mentioned

Title to be
deduced to
reversionary
legacy.

OF REVER-
SIONARY
INTERESTS,
POLICIES, -
ANNUITIES, &c.

in the particulars is derived, and by the trustees of whose will the same was paid into the Court of Chancery under the Trustees' Relief Act; but the vendor shall not be required to produce the probate of such will or any residuary or other accounts, or to prove that the reversionary interest forming the subject-matter of lot — has not been otherwise encumbered than as in the particulars appears.

Vendor not to
be required to
produce deeds
not in his pos-
session.

IX. EVERY purchaser shall be entitled, at his own expense, to examine his abstract with such deeds and other documents as are in the vendor's possession; but the vendor shall not be bound to produce or procure the production of any deeds, wills, or other documents whatsoever, not in his possession, either for the examination or verification of the abstract or otherwise, nor to procure attested or other copies of, or extracts from such deeds, wills, or other documents, nor to give any information in relation thereto; and the non-production of any such deeds, wills, or other documents, as are not in the vendor's possession, shall not be deemed an objection to the title. The vendor shall not be required to identify or otherwise prove by evidence not in his possession that the sum of stock,—the reversion to one third part of which forms lot — of the particulars,—is the same as that given by the will of the said A. B., deceased.

Errors in
particulars
and compen-
sation.

X. IF any mistake or omission shall be discovered in the description of the property, or any error whatever shall appear in the particulars, such mistake, omission or error shall not vitiate or annul the sale, but a compensation or equivalent shall be given or taken, as the case may require, the amount to be settled in case of difference by two referees, one to be appointed by each party, or by an umpire to be appointed by the two referees before they proceed in the reference.

Vendor may
re-sell in case
of purchaser's
default.

XI. IF any purchaser shall fail to comply with these conditions, his deposit money shall be forfeited to the vendor, who shall be at liberty to proceed to another sale, either by public auction or private contract, with or without notice to the purchaser at this present sale, and the deficiency (if any) occasioned by such second sale, together with all charges attending the same, shall, immediately after such sale, be made good by the defaulter at this present sale; and in case of non-payment of the same, the whole thereof shall be recoverable by the

vendor as and for liquidated damages; and it shall not be necessary for the vendor previously to tender an assignment to the purchaser or purchasers respectively.

OF REVER-
SIONARY
INTERESTS,
POLICIES,
ANNUITIES, &c.

No. IX.

CONDITIONS *as to an ESTATE SOLD under an ORDER*
of the CHANCERY DIVISION OF THE HIGH COURT OF
JUSTICE (p).

OF AN ESTATE
SOLD UNDER
A DECREE.

I. No person is to advance less than £—— at each bidding.

Advance.

II. THE sale is subject to a reserved bidding for each lot, which has been fixed by the Judge to whom this cause is assigned.

Reserved bid-
ding.

III. EACH purchaser is at the time of sale to subscribe his name and address to his bidding, and the abstract of title and all written notices and communications and summonses are to be deemed duly delivered to and served upon the purchaser by being left for him at such address, unless or until he is represented by a solicitor.

Purchaser to
subscribe his
name, &c.

IV. EACH purchaser is at the time of sale to pay a deposit of £—— per cent. on the amount of his purchase-money to ——, the person appointed by the said Judge to receive the same.

Deposit.

V. THE chief clerk of the said Judge will after the sale proceed to certify the result, and the —— day of ——, at —— of the clock —— noon, is appointed as the time at which the purchasers may, if they think fit, attend by their solicitors at the Royal Courts of Justice to settle such certificate. The certificate will then be settled, and will in due course be signed and filed, and become binding without further notice or expense to the purchasers.

The chief clerk
to verify the
result.

VI. THE vendor is, within —— days after such certificate has become binding, to deliver to each purchaser or his solicitor

Delivery of
abstract.

(p) This Precedent is identical with the form of "Ordinary Conditions of Sale," on a sale by the Court, which will be found in Appendix L. to the Rules of the Supreme Court, 1883.

**OF AN ESTATE
SOLD UNDER
A DECREE.**

Time for
delivery of
objections.

an abstract of the title to the lot or lots purchased by him, subject to the stipulations contained in these conditions, and each purchaser is within four days after the actual delivery of the abstract to deliver at the office of —, solicitor at — in the county of —, a statement in writing of his objections and requisitions (if any) to or on the title as deduced by such abstract; and upon the expiration of such last-mentioned time (and in this respect time is to be deemed of the essence of the contract), the title is to be considered as approved of and accepted by such purchaser, subject only to such objections and requisitions (if any).

Timber to be
valued and
paid for.

VII. EACH purchaser is, in addition to the amount of his bidding at the sale, to pay the value of all timber and timber-like trees, tellers, and pollards (if any) on the lot purchased by him, down to 1s. per stick inclusive, the amount thereof to be ascertained by a valuation to be made in manner following (that is to say): each party (vendor and purchaser), or their respective solicitors, is within — days after the chief clerk's certificate has become binding, to appoint by writing one valuer, and give notice in writing to the other party of such appointment, and the valuers so appointed are to make such valuation, but before they commence their duty they are to appoint an umpire by writing, and the decision of such valuers, if they agree, or of such umpire if they disagree, is to be final, and in case the purchaser shall neglect or refuse to appoint a valuer, and give notice thereof in the manner and within the time above specified, the valuation is to be made by the valuer appointed by the vendor alone, and his valuation is to be final.

Payment of
purchase-
money on
order.

VIII. EACH purchaser is under an order for that purpose to be obtained by him, or in case of his neglect by the vendor at the costs of the purchaser, upon application at the chambers of the said Judge, to pay the amount of his purchase-money (after deducting the amount paid as a deposit) together with the amount of the valuation under the 7th condition (if any) into Court, to the credit of this cause, on or before the — day of —, and if the same is not so paid, then the purchaser is to pay interest on his purchase-money, including the amount of such valuation, at the rate of £— per cent. per annum from the — day of — to the day on which the same is actually paid. Upon payment of the purchase-money in manner afore-

said, the purchaser is to be entitled to possession, or to the rents and profits, as from the — day of —, down to which time all outgoings are to be paid by the vendor.

OF AN ESTATE
SOLD UNDER
A DECREE.

IX. If any error, misstatement, or omission, shall appear to have been made in the above particulars, such error, misstatement, or omission, is not to annul the sale nor to entitle the purchaser to be discharged from his purchase, but a compensation is to be made to or by the purchaser as the case may be, and the amount of such compensation is to be settled by the said Judge at Chambers.

Error in particulars.

[Add to these such conditions respecting the title and title deeds as the conveyancing counsel shall advise to be necessary or proper.]

LASTLY. If the purchaser shall not pay his purchase-money at the time above specified, or at any other time which may be named in any order for that purpose, and in all other respects perform these conditions, an order may be made by the said Judge upon application at his chambers for the re-sale of the lot purchased by such purchaser, and for payment by the purchaser of the deficiency (if any) in the price which may be obtained upon such re-sale, and all costs and expenses occasioned by such default.

Default of
payment of
purchase-
money.

No. X.

CONDITIONS of SALE of STANDING TIMBER.

OF STANDING
TIMBER.

I. THE highest bidder shall be the purchaser, and if any dispute shall arise between two or more bidders, the lot in dispute shall be put up again or not at the discretion of the auctioneer, who is to be the sole arbitrator in such dispute. The auctioneer is to have the right of refusing any bidding, and of withdrawing, consolidating, or dividing any lots contained in the particulars of sale.

Highest bidder
to be the pur-
chaser.

II. THE vendor shall not be answerable for the description of the lot after the fall of the hammer. The purchaser must take it with all faults, errors of description or number, and be at all risks. No person to advance a less sum at each bidding than shall be named by the auctioneer, or retract his bidding, and

Purchaser to
take each lot
according to
description
and with all
faults.

**OF STANDING
TIMBER.**

**Payment of
purchase-
money.**

the auctioneer shall be at liberty to bid once or oftener on each lot for the benefit of the vendor.

III. THE purchaser of each lot shall at the close of the sale, or of his bidding if required, pay into the hands of the auctioneer a deposit of twenty per cent. in part of his purchase-money, and give his name and place of abode, and shall also sign an agreement to complete the purchase according to these conditions; and each purchaser shall give the vendor his bill of seven months for the unpaid purchase-money for the oak, and his bill of four months for the unpaid purchase-money for the remainder of the timber, and each such purchaser shall, if required by the vendor or his agent, be provided with a responsible person or persons to join him in such bills respectively as aforesaid, such bills to be given to the auctioneer at the close of the sale, or within one week from the day of sale, the purchaser paying for the stamps, and not until the same shall be so given and executed, and such further security shall be given if required as hereinafter mentioned, shall the purchaser be allowed to enter on his lot or lots, or commence cutting the timber, and if he previously attempt to do so he shall be deemed a trespasser, and liable to pay to the vendor treble the amount of his purchase-money for such lot or lots, to be recovered as liquidated damages. Each purchaser shall at any time or times give further security if requested. The purchasers shall respectively pay to the auctioneer sixpence in the pound over and above the purchase-money for fees.

**How the
timber is to be
felled and
removed.**

IV. THE trees are to be felled with as much care as possible, and the bark and wood thereof to be properly stacked, and removed only by the usual roads, and the purchasers are to be accountable for all damage done to any of the remaining timber, or otherwise to the estate of the vendor, or to cattle browsing on the grounds and premises; no tree is to be rooted up without the sanction of the vendor or his agent being first obtained, and the purchaser before the trees are thrown shall sever and cut off such boughs as are necessary to prevent such damage, and if any workman shall be objected to by the vendor, the purchaser shall on application or notice being given him for this purpose discharge such workman from off the estate, and the purchaser shall forfeit £5 for every tree or sapling cut which has not been marked for sale. No dogs are to be taken on any

part of the estate, either by the purchasers or their workmen. All the oak timber is to be removed from off the lands in dry or frosty weather, having regard to the season, on or before the — day of —, 18—, and the remainder of the said timber is to be removed and cleared away before the — day of —, 18—, except lots —, which shall be removed before the — day of —, 18—. All lots remaining after the time before mentioned shall be forfeited to the vendor. Purchasers whose amounts shall not exceed £10 shall pay for the same on or before the — day of —, 18—. The whole of the tops shall be properly bundled immediately after the trees are felled, and shall be removed from off the lands within one month after such felling, and if not removed as aforesaid shall be forfeited.

OF STANDING
TIMBER.

V. THE purchasers shall not enter on any arable lands after the same shall be sown with corn, or upon any grass land after the same is laid up until mown, nor upon any young grass, turnips, or other crops, to carry away the timber, without the consent of the respective occupiers until the crops are respectively cleared, and the whole of the timber is to be removed only by the roads and gaps appointed by the vendor or his agent. No purchaser will be allowed to sink pits for the conversion of his timber on the estate without the consent of the proprietor or his agent. Any injury or damage done to the property of the vendor or his tenants shall be ascertained by the auctioneer or any person he may appoint, whose award or determination of damages shall be final. The specified number of trees on the catalogue annexed shall be taken as correct. The whole of the timber shall be felled by the respective purchasers at their own expense, except lots —, which shall be felled by and at the expense of the vendor.

When the
timber is to be
carried away,
and how
damage to be
paid for.

VI. THE purchasers of the pollards, saplings, poles, hurdlewood, and underwood, shall pay for the same at the close of the sale. The pollards, saplings, and poles shall be cleared off the premises by the — day of —, and the hurdlewood and underwood by the — day of —. The purchasers of the hurdlewood shall not cut any saplings that are marked, nor any saplings that are likely to become trees.

Condition as
to paying for
and clearing
away pollards,
saplings, &c.

VII. No part of the timber, trees, wood, or bark shall be in anywise liable to be seized or taken by any person other than the vendor for the debts, or other engagements, if any, of the

Provisions in
case of bank-
ruptcy of pur-
chaser before
payment of

**OF STANDING
TIMBER.**purchase-
money, &c.Provisions for
purchaser re-
fusing to
comply with
previous con-
ditions.

purchasers, until the whole of the purchase-money is paid, and satisfaction is made for damages as aforesaid, notwithstanding any bankruptcy of or any other thing whatsoever affecting the purchasers or any of them. The carriages used shall have broad wheels, and the usual roads shall not be deviated from but with the consent of the vendor or his agent.

VIII. If any purchaser shall refuse or neglect to comply with the foregoing conditions, or attempt to remove any of the said timber from off the lands and premises before the purchase-money is paid or security given as aforesaid, then the deposit money shall be forfeited to the vendor, who shall be at liberty by himself or his agent to follow and stop the timber wherever it may be found, and to resell the same by public auction or private contract, and the deficiency, if any, together with all expenses attending the same, shall be made good by the defaulter or defaulters at this present sale, and be recoverable as and for liquidated damages, but any increase of price shall belong to the vendor.

No. XI.**AS TO COM-
MENCEMENT
OF TITLE.****SPECIAL CONDITIONS *as to* COMMENCEMENT *and*
EVIDENCE *of* TITLE.**Title to com-
mence with
general devise.

I. THE title to lot — shall commence with a general devise contained in the will of —, who died in the year —, and the purchaser shall assume that the testator was, at the time of his death, seised in fee simple of the said lot, [such seisin being recited or stated in subsequent documents].

Title to com-
mence with
general devise,
seisin of testa-
tor to be
proved by
declaration of
possession.

II. THE title to the property shall commence with a general devise contained in the will of —, who died in the year 18—, and the purchaser shall assume the seisin in fee simple of the testator upon the faith of a statutory declaration which will be furnished to him at his own expense, that the testator was in the possession or receipt of the rents and profits of the property at the time of and for some time previously to his death, and that the persons deriving title under his said will have been in such possession or receipt since his death and up to the present time.

III. THE vendors are the trustees of the will of —, who died in the year —. The title shall consist of the said will and of several appointments of new trustees thereof, in which appointments as well as in the said will the real estate of the testator is referred to by a general description, and there is no specific description of the property now offered for sale. A statutory declaration will be furnished to the purchaser at his own expense that the property has been held consistently with the title derived under the will for the last 20 years and upwards, and such declaration shall be accepted by the purchaser as sufficient evidence that the testator was at his death seised in fee simple of the property.

AS TO COMMENCEMENT OF TITLE.

Title to consist of will and appointments of new trustees containing general description only. Seisin to be evidenced by declaration.

IV. THE title to lot — shall commence with the — inclosure award, dated, &c., under which the same was allotted to —, and the purchaser shall not be entitled to call for the production of, or to investigate or make any objection in respect of the title to the property, in respect of which such allotment was made, and such award shall be deemed conclusive evidence of the title to and tenure of the said allotment, and the validity and regularity of the award in all respects shall be presumed.

With inclosure award.

V. THE title to lot — shall commence with the — inclosure award dated — under which the same was allotted to — in exchange for other land, and the purchaser shall not be entitled to call for, or investigate, or make any objection in respect of the prior title to the said lot, or the title to the land given in exchange for the same, and the validity and regularity of the said award in all respects shall be presumed.

With exchange under inclosure award.

VI. LOTS — and — appear in a terrier and map annexed to the — inclosure award dated —, and are therein mentioned to be old enclosures belonging to —. Such terrier and map shall be deemed sufficient evidence of the seisin in fee simple of the said —; and no earlier title to the said lots shall be required.

With statement in inclosure award.

VII. WHERE any part of the property appears on the abstract to have been purchased from the Commissioners under an Inclosure Act, the purchaser shall presume that the provisions and directions of the Act in relation to the sale by the Commissioners, and payment of the purchase-money, and also in relation to the making of the said property tithe free, have been duly complied with.

Presumption as to regularity of award.

<p>AS TO COMMENCEMENT OF TITLE.</p> <hr/> <p>Commencement of title as to exchanges and allotments.</p>	<p>VIII. THE vendors shall not be required to produce or show the title to any lands taken in exchange by deed, or under any Act of Parliament or award anterior to the deed, Act of Parliament, or award, by or under which such exchanges or awards were made, or to call for the production or to make any objection in respect of the title to the property given in exchange, and no evidence of the requisite consents to any such exchanges shall be called for or required; and as to allotments under any inclosure award, the title shall commence with the award, and the purchaser shall not be entitled to call for the production or to make any objection on account of the title to the property in respect of which such allotments or award may have been made, and such award shall be considered as conclusive evidence of the title to and tenure of such allotments, and the validity and regularity of such award shall in all respects be presumed.</p>
<p>As to enfranchised copyholds.</p>	<p>IX. THE property was formerly copyhold and was enfranchised in the year 18— under the Copyhold Acts, and the same is sold subject to the rights of the lord of the manor to the minerals thereunder and such other rights as are reserved to him by the said Acts. The title shall commence with the admission, &c.</p>
<p>Title to consist of lease and last assignment.</p>	<p>X. THE property is held under a lease dated —, and (after divers mesne assignments) was assigned to the vendor in the year 18—. The title shall consist of the original lease, and of the assignment to the vendor, and the purchaser shall not require the production of the mesne assignments, or any of them.</p>
<p>As to title to mortgage term by adverse possession.</p>	<p>XI. THE title shall commence with an indenture of the — day of —, whereby the property was demised for 500 years by way of mortgage. The vendors have been in uninterrupted possession of the property since the date of a certain indenture of the — day of — (whereby the property and the moneys thereupon secured were transferred to them), without having made any intermediate acknowledgment of the title of the mortgagor or his right of redemption, and under these circumstances it shall be assumed by the purchaser that the vendors are absolutely entitled to the premises for the residue of the said term of 500 years, absolutely discharged from all equity of redemption; and the purchaser shall not be entitled to require any other evidence of the above facts than a statutory declaration by the vendors to the effect above mentioned.</p>

XII. THE title shall commence with an indenture of lease dated the — day of —, whereby A. B. demised the property to C. D. for 80 years, on the terms therein mentioned; and the title to the reversion in fee expectant on the said lease shall commence with an indenture dated the — day of —, whereby E. F. conveyed such reversion in fee to G. H.; and the purchaser shall not be entitled to require the production of the contract in pursuance of which it is stated in the said lease that the same was granted; and it shall be assumed that the said A. B. had at the date of the first-mentioned indenture ample power to grant such lease, and that the said E. F. had at the date of the last-mentioned indenture ample power to dispose of such reversion in fee as aforesaid.

AS TO COMMENCEMENT OF TITLE.

Title to commence with lease and conveyance of reversion in fee.

XIII. THE vendor shall not be required to show any title to lot —, or any evidence or explanation thereof, other than a statutory declaration from an old inhabitant in the parish in which the property is situate to the effect that the father of the vendor, who died intestate more than thirty years since, was in possession of the last-mentioned lot at the time of his decease, and also a counterpart of the lease under which the present tenant has held the said lot for more than twenty years of the present vendor.

Declaration as to possession.

XIV. THE vendor shall not be required to produce copies of any grants from the Crown.

As to grants from the Crown.

XV. THE vendor shall not be required to produce or give any abstract or evidence of the nature or contents of any deed, will or instrument not in his possession, which may be recited or noticed in any of the abstracted deeds dated twenty years ago or upwards, other than shall appear therein.

Vendor not to produce recited deeds.

XVI. THE title to the advowson shall commence with an indenture dated —, and as there have been three presentations since the date of the said indenture, the purchaser shall be satisfied with the title commencing as above, notwithstanding it does not cover three entire incumbencies.

Title to advowson.

XVII. THE title to the several ground rents shall commence with counterparts of the several documents by which the same were respectively granted or reserved, and no purchaser shall be entitled to call for the originals of those documents, or for the production of, or to investigate or make any objection on account of the prior title to the several properties out of which

Title to ground rents.

AS TO COMMENCEMENT
OF TITLE.

such rents were respectively made payable by those documents ; and no evidence shall be required of the identity of such properties respectively with the properties out of which the said rents respectively are represented in the particulars to be payable.

Title to
ground rents
(another
form).

XVIII. THE counterparts of the deeds and leases by which the freehold and other ground rents comprised in the particulars were created are the only evidence which will be supplied of the creation of such rents or of the remedies for securing the payment thereof, and no objection shall be taken on account of the manner or form in which the freehold ground rents were originally granted or reserved.

Where pro-
perty is sold
subject to fee-
farm rent.

XIX. THE property is sold subject to a fee-farm rent of £5 created by an indenture dated —, and to covenants and conditions contained in the same indenture as to buildings and otherwise, the nature of which covenants and conditions may be ascertained by an inspection of the said indenture, or a copy or abstract thereof, which will be produced at the sale. The receipt for the last payment of rent which shall have become due prior to the completion of the purchase shall be accepted by the purchaser as conclusive evidence of the performance of the covenants and conditions up to the completion of the purchase.

As to land
acquired in
exchange.

XX. ABOUT an acre of ground, part of lot —, was acquired by the vendor under an agreement for exchange made in the year — with A. B., and has been in the possession of the vendor since that time, but no conveyance has been made to him for completing such exchange, and A. B. is now dead, leaving an infant heir, —. The vendor shall not be required to procure a conveyance of the said land, or to furnish any title thereto, or to the land given by him in exchange for the same, other than the aforesaid agreement.

Declaration as
to pedigree,
&c.

XXI. THE declaration with which the vendor on the occasion of his purchase was supplied in proof of the pedigree of — of the identity of the property, and of various other circumstances connected with the title, shall be accepted by the purchaser as conclusive evidence of the matters therein stated and declared.

Evidence as to
satisfaction of
a particular
legacy.

XXII. As to lot —, the purchaser shall assume the due payment and satisfaction of a legacy of £—, charged thereon by the will of a former owner, who died more than — years

ago, and which became payable on his death, but for which no receipt or release can be produced.

AS TO COMMENCEMENT OF TITLE.

XXIII. THE vendor shall not be required to produce the receipt for, or any other evidence of, the satisfaction of any pecuniary legacy bequeathed by the will of —, who died more than twenty years since, and the payment of which respectively is not thereby postponed, and at this distance of time it shall be assumed that every such legacy has been satisfied.

Evidence as to satisfaction of legacies generally.

XXIV. THE purchaser shall not require evidence of the payment of any legacy or sum of money charged on the estate by any will or other document, and which became payable more than twenty years ago.

Evidence as to payment of charges.

XXV. As to a certain indenture dated the — day of —, and which was executed by the attorney of the vendor on that occasion, it shall be assumed by the purchaser that the principal was then alive.

As to deed executed by attorney.

XXVI. THE purchaser shall not be entitled to any other evidence of the satisfaction of a mortgage dated the — day of — than the fact that the mortgage deed is now in the possession of the vendor, and a statutory declaration by him to the effect that the mortgage deed has been in his possession during the last — years, and that no claim has ever been made upon him for principal or interest under the same.

As to satisfaction of mortgage.

XXVII. THE purchaser shall make no objection on the ground that no receipt for the consideration money is indorsed on a certain indenture dated —, the receipt thereof being duly acknowledged in the body of the deed (q).

As to absence of indorsed receipt.

XXVIII. It shall be assumed that every former owner of any part of the property whose widow (if any) would have been entitled to dower or free bench, and is not mentioned in the title, did not leave a widow.

As to dower.

XXIX. THE title to the property being well known in the neighbourhood, no purchaser shall require any other evidence of such title than the conveyance of the lot or lots purchased by him to the present vendor.

Title to consist of conveyance to vendor.

XXX. THE re-conveyance or re-assignment of any legal estate by any trustee or mortgagee shall be presumed, where the period of thirty years shall have elapsed from the last con-

Presumption of re-conveyance of legal estate.

(q) See Conveyancing Act, 1881, s. 54.

AS TO COM-
MENCEMENT
OF TITLE.

Determination
of leases to be
assumed.

veyance or assignment thereof, and where no mention shall be made in any of the subsequent deeds of such legal estate being outstanding.

XXXI. THERE being in a covenant against incumbrances contained in a deed dated — an exception of two leases determinable on the lives of A. B. and C. D., no evidence shall be required of the determination of these leases, nothing being now known by the vendor concerning the same, or either of them.

No. XII.

CONDITIONS *as to* TITLE DEEDS, ATTESTED COPIES, &c.

AS TO TITLE
DEEDS,
ATTESTED
COPIES, &c.

Purchaser to
give to vendor
an acknow-
ledgment for
production of
deeds.

I. (*As in Precedent No. V., supra*, pp. 47, 48.)

II. THOSE documents of title which relate not only to the property now offered for sale, but also to other property of the vendor of less value, will be delivered to the purchaser, and he shall give to the vendor an acknowledgment of his right to production and delivery of copies thereof, and an undertaking for their safe custody, such acknowledgment and undertaking to be prepared by and at the expense of the vendor, but to be perused by the purchaser at his own expense.

Custody of
lease.

III. As lots 3, 4, and 5 are held under the same lease, and are together subject to a ground rent of £1 per annum, the purchaser of lot 5 shall be liable to pay the whole of such ground rent as between the purchasers of the same three lots, and shall enter into covenants with the purchasers of lots 3 and 4 respectively to pay the same, and to indemnify them against all claims and demands in respect thereof. And the purchaser of lot 5 shall be entitled to the possession of the original lease of the said three lots as soon as all the said lots have been sold, and the sale thereof respectively is completed, and shall give to the purchasers of the other two lots an acknowledgment of their right to production and delivery of copies thereof, and an undertaking for the safe custody thereof. But until the whole of the three lots shall be sold, and the sale thereof finally completed,

whether at the present or any future sale, the vendors shall be entitled to retain the said lease, and they will in that case, upon the request of the purchaser of any of the same lots, give to him an acknowledgment and undertaking as aforesaid. Every acknowledgment and undertaking under this condition shall be prepared by and at the expense of the person to whom it is given, and shall be perused by and on behalf of the person giving the same at his own expense.

AS TO TITLE
DEEDS,
ATTESTED
COPIES, &c.

IV. As to a farm called —, the same forming at the time of its purchase by the former owner part of a larger property held under the same common title, such owner had handed over to him attested copies only of the former deeds in substitution of the deeds themselves, accompanied, however, with a covenant for the production of the originals. The deeds have since passed into a custody from which the vendors are advised their production cannot be enforced. The vendors will apprise the purchaser of the depositary, but they shall not be bound to take any steps to enforce production, and if the purchaser be unable to procure the production of the deeds, he shall accept the title on the evidence of the attested copies.

Purchaser to
be satisfied
with attested
copies.

V. INASMUCH as certain indentures of lease and release, dated respectively the — and — days of —, whereby lot — was conveyed to the vendor, are lost, and can nowhere be found after a diligent search for the same, the purchaser shall be satisfied with the plain copies of those indentures which the vendor has in his possession, and it shall be assumed that such indentures respectively were duly executed and attested.

Lost inden-
tures.

No. XIII.

CONDITIONS *as to* DESCRIPTION of PROPERTY and IDENTITY.

AS TO DESCRI-
PTION AND
IDENTITY.

I. ALL the lots are believed, and shall be taken to be correctly described in the particulars, as to quantity and otherwise, and are sold subject to all chief or quit rents, rights of way and other easements (if any) affecting the same; and if any error,

The descrip-
tion of pro-
perty to be
deemed
correct.

AS TO DESCRIPTION AND IDENTITY. misstatement, or omission in the particulars be discovered, the same shall not annul the sale, nor shall any compensation be allowed by the vendor or the purchaser in respect thereof.

As to evidence of identity. II. No purchaser shall be entitled to require any further or other evidence of the identity of the lot or lots purchased by him with the property described in the abstracted documents than is afforded by a comparison of the descriptions in the particulars, and in the abstracted documents respectively, and a statutory declaration (to be made and obtained at the expense of the purchaser requiring the same) that the purchased property has been held consistently with the title shown during the last twenty years.

Another form. III. THE vendors shall not be required to identify or connect any of the lands comprised in the particulars, with the general or other descriptions contained in any of the deeds or other documents of title, nor to account for the quantity or abutments of any lot, or part of a lot varying from the quantity or abutments stated in any such deeds or documents.

Another form. IV. IN consequence of various alterations which have been made by the removal of fences, by laying various fields together, by inclosures, and other circumstances, the property is now, in many instances, described by names and quantities differing from those by which the same is described in the ancient documents of title, and the vendors shall not be required to identify the property with the ancient descriptions as contained in such documents.

Another form. V. THE descriptions contained in the title deeds and other documents abstracted shall be taken to comprise the respective lots, and no evidence of identity shall be required beyond such as is afforded by the descriptions in the deeds, and the vendors shall not be required to explain or reconcile any apparent differences or discrepancies in the descriptions contained in the abstracts. The several lots are sold subject to the estates and interests of tenants, whether by lease or otherwise.

Another form. VI. EVERY purchaser shall admit the identity of the property purchased by him, with that comprised in the abstracted muniments upon the evidence afforded by a comparison of the descriptions in the particulars and muniments, and by a declaration to be made and obtained (if required) at the purchaser's expense, that the purchased property has been enjoyed accord-

ing to the title for twenty years, unless where the title is limited to commence from a later date, when such declaration shall be limited to the date at which the title commences, and by the maps and terriers in cases in which evidence is afforded by parochial inclosure or other maps.

AS TO DESCRIPTION AND IDENTITY.

VII. THE vendors shall not be required to identify or distinguish the copyhold parts of any lot from the freehold parts thereof, nor the copyhold parts held under one manor from those holden under any other manor; and in case any lot is held under more than one title, the vendors shall not be required to distinguish or point out the parts held under each title.

Vendor not to be required to distinguish tenures.

No. XIV.

CONDITIONS *as to* TITHES (*r*), LAND TAX, APPORTIONMENT of RENTS and OUTGOINGS.

AS TO TITHES, LAND-TAX, APPORTIONMENT, &c.

I. ALL the lots having been declared to be tithe free (*s*) by the — inclosure award, the purchasers shall not require any other title to, or proof of the exemption of the lots from tithe, than the production of the said award.

Evidence of land being tithe free.

II. THE purchasers shall require no other evidence that the several lots are tithe free, than a declaration by the vendor that no tithes, or rent-charge in lieu of tithes, have been paid for the same for twenty years prior to the day of sale.

Another form.

III. THE purchasers shall require no other evidence that the land tax on the several lots has been redeemed, than a declaration that no land tax is charged thereon in the parochial assessments.

Evidence of redemption of land-tax.

(*r*) Where a vendor is owner of lands, and of the tithes issuing out of them, but the tithes have not been merged, the particulars ought not to state the lands as tithe free.

(*s*) A property is generally tithe free in virtue of a prescriptive composition, commonly called a *modus decimandi*, or by reason of a composition made under an Inclosure Act, or by a merger under the Tithes Commutation Acts, see 6 & 7 Will. IV. c. 71, s. 71, and 2 Vict. c. 64, ss. 1, 3; Burt. Comp. Ch. 6, s. 4.

When property is tithe free.

AS TO TITHES,
LAND-TAX,
APPORTION-
MENT, &c.

Apportion-
ment of rents.

IV. THE lots are sold, subject to the existing tenancies ; and as to such lot or lots as are in tenancy with other property at an entire rent or rents, the same shall be apportioned among such lots and other property as specified in the particulars, and every such apportionment shall be conclusive, and the tenant shall not be required in any case to consent to or concur in such apportionment.

Apportion-
ment of rent
on sale of
leaseholds.

V. Lots 1 and 2 being held under one lease, at the entire rent of £——, the sum of £—— shall be the apportioned rent for lot 1, and the sum of £—— shall be the apportioned rent for lot 2 ; and the purchasers of the said lots shall enter into mutual covenants for the payment of their respective proportions of the said rent, and shall grant mutual powers of distress and entry for securing such payment. If only one lot shall be sold the vendor shall stand in the place of the purchaser as regards the other lot for the purpose of this condition.

Apportion-
ment of rents
and covenants
by way of
under-leases.

VI. THE purchaser of the largest lot in value shall take an assignment of the lease, and shall execute to the other purchasers under-leases of the lots purchased by them respectively, for the remainder of the term (wanting ten days), subject to the rent of £—— in respect of each of such lots ; and by such under-leases each purchaser shall be indemnified against the payment or observance of any portion of the rent or covenants mentioned in the lease, except the rent and covenants to be paid and performed in respect of his particular lot, and shall covenant for the payment of his proportion of the said rent and covenants. If any lot shall remain unsold, the vendor shall stand in the place of the purchaser of the largest lot in value for the purposes of this condition. Every instrument to be executed under this condition shall be prepared by and at the expense of the respective purchasers, who shall also execute at their own expense counterparts of their leases (t).

Apportion-
ment of land-
tax and rent-
charge.

VII. IN all cases where an entire sum for land-tax, rent-charge in lieu of tithes, or other outgoings, is payable in respect of the lands comprised in two or more lots, the same shall be apportioned amongst such several lots at the sums mentioned

(t) This is a convenient arrangement, but it is open to the objection that the purchaser who takes the assignment becomes personally liable to the superior landlord for the whole of the rent, and the observance of the covenants as regards the whole of the property.

in the particulars at the foot of each lot respectively; and such apportionment shall be accepted by and binding upon the respective purchasers; and anything that may be requisite to be done or executed, for giving effect to such apportionment, shall be at the cost of the purchaser requiring the same; but the completion of any purchase shall not be delayed on account of any such requisition.

AS TO TITHES,
LAND-TAX,
APPORTION-
MENT, &c.

VIII. THE whole of the property comprised in the particulars, together with other property of the vendor not included in this sale, is subject to a perpetual yearly rent-charge of £——. Each of the lots shall be held subject to such proportion of the said rent-charge as is specified in the particulars, and each purchaser shall enter into a covenant with the other purchasers and with the vendor for the payment of the covenantor's proportion of the rent-charge, and to indemnify them respectively against the same, and shall also grant to them respectively powers of distress and entry upon the lot or lots so purchased by the covenantor for better securing such indemnity. If any of the lots shall not be sold, the vendor shall for the purpose of this condition stand in the place of the purchaser of such lot or lots respectively. The residue of the rent-charge shall remain exclusively charged on the property retained by the vendor, and he shall in respect thereof enter into similar covenants with the several purchasers, and grant to them similar powers of distress and entry. Every deed of covenant and grant under this condition shall be prepared by and at the expense of the covenantee. The receipt for the last payment of the said rent-charge due prior to the day of sale, shall be accepted as conclusive evidence that all the covenants and conditions contained in the indenture creating the said rent-charge, and on the part of the grantee to be observed and performed, have been duly observed and performed up to the day of sale.

Apportion-
ment of per-
petual rent-
charge issuing
out of the
property sold,
and other
property of
the vendor.

IX. THE dwelling-house now offered for sale is one of four dwelling-houses granted by a deed dated, &c., in consideration of a perpetual rent of £4 thereby reserved, and subject to certain covenants and conditions therein contained with respect to buildings and otherwise, the nature of which covenants and conditions may be ascertained by an inspection of the deed at any time prior to the completion of the purchase. This dwelling-house was afterwards conveyed to the vendor subject to a yearly

On sale of
dwelling-
house, subject
to proportion
of perpetual
rent-charge.

AS TO TITHES,
LAND-TAX,
APPORTION-
MENT, &c.

sum of £1, part of the said rent-charge, and to the aforesaid covenants and conditions, so far as the same related to the said dwelling-house: and mutual covenants were entered into for indemnifying each party from the payment of the rent, and from the observance of the covenants which ought to be paid and observed respectively by the other party. The present sale is made on the footing of the above arrangement.

No. XV.

CONDITIONS *as to INDEMNITY against CHARGES.*

AS TO
INDEMNITY
AGAINST
CHARGES.

Vendor's bond
to be indemnity
against annual
payment.

I. Lot — is subject to an annual payment of £—— to the poor of L——, which is also charged on other estates of considerable value. The purchaser shall accept the vendor's bond or covenant as a sufficient indemnity against the aforesaid annual payment, such bond or covenant to be prepared by and at the expense of the purchaser.

Vendor to
assign bond
of indemnity
to purchaser.

II. Lot — is subject to an annual payment of £—— to the poor of L——, which is also charged on other estates in the same parish. Upon the occasion of the purchase of the said lot by the late A. B., in the year 18—, the then vendor gave to him a bond of indemnity against the aforesaid annual payment. The present vendors being the executors and trustees of the will of the said A. B., will assign the said bond to the purchaser, who shall accept the same as a sufficient indemnity. The assignment to be prepared by and at the expense of the purchaser.

Part of the
purchase-
money to be
set apart to
answer charge.

III. THE property offered for sale is charged with a sum of £2,000, which will become payable to a son of the vendor, now aged eighteen years, upon his attaining the age of twenty-one years, or upon the death of the vendor (which shall last happen). The vendor will enter into a covenant with the purchaser to satisfy the charge when it shall become payable, and to indemnify the purchaser therefrom, and will also set apart a sum

of £—— out of the purchase-money and invest it in £2½ per cent. Consolidated Stock in the names of two trustees, one to be nominated by the vendor, and the other by the purchaser, upon proper trusts for the same purpose. The purchaser shall accept such covenant and declaration of trust as a sufficient indemnity against the said charge, and the deed or deeds containing the same shall be prepared by and at his expense.

AS TO
INDEMNITY
AGAINST
CHARGES.

IV. THE property hereby offered for sale is, with other property, charged with a jointure of £——, payable to the vendor's wife, if she survives him, and with £——, for the portions of his children, who are at present infants. The vendor will convey to two trustees, one of whom shall be nominated by himself, and the other by the purchaser, the remaining property subject to these charges, upon proper trusts for raising the same out of such remaining property, in exoneration of the property hereby offered for sale, and will also furnish to the purchaser a statutory declaration by a competent land valuer, to the effect that such remaining property is worth at least £——. The purchaser shall accept such conveyance in trust and declaration as a sufficient indemnity against the charges.

Indemnity
against jointure and
portions.

V. THE property comprised in the particulars is subject, together with other estates, to an annuity of £——, for the life of A. B. By an indenture, dated the —— day of ——, the vendor demised certain property not comprised in the particulars (which is also subject to such annuity) to two trustees, for 600 years, upon the trusts and under the powers therein mentioned, to the intent that the same might be an indemnity to the several purchasers and proprietors of all the remainder of the property of the vendor which might be liable to such annuity from the payment thereof. The lands so appropriated are of ample value for the purpose of such exoneration, and the purchaser shall not be entitled to make any objection on account of the existence of the annuity, or to inquire into the title thereto, or to require any further or additional indemnity to be given against the same, except (if required) the personal covenant of the vendor for this purpose, to be prepared by and at the expense of the purchaser, or to require the concurrence of the annuitant; but the purchaser shall be entitled at his own expense, to the usual statutory acknowledgment from the trustees of the said indenture, of the right to production of such indenture.

Purchaser to
be satisfied
with indemnity
of other lands
against
annuity.

**AS TO
INDEMNITY
AGAINST
CHARGES.**

As to in-
demnify
against
annuity and
gross sum.

VI. Lots — and — are, with other property, charged with an annuity of £—, payable to A. B., during the widowhood of C. B., her mother, and a sum of £—, payable to A. B., on the death or marriage of the said C. B., and the concurrence of the said A. B. in the conveyance to the purchasers cannot be obtained. A sum of £— has been invested upon mortgage of certain hereditaments in the names of the vendors for the purpose of indemnifying the several purchasers or proprietors of the several hereditaments subject to the aforesaid charges, and proper trusts in that behalf have been declared of the same. The purchasers shall be satisfied with this indemnity and the production of the deed declaring the trusts of the indemnity fund, of which they may have a copy at their own expense. The vendors have taken the usual powers of altering or varying the securities for others of a like nature, and the purchasers shall not be entitled to inquire into the value of or title to the original or any substituted securities.

As to
indemnity
against annual
sums.

VII. THE several annual sums of £— and £—, subject to which lots — and — respectively are in the particulars mentioned to be sold, are charged upon lands comprised in such lots respectively, together with lands of less value comprised in other lots, which are intended to be sold free therefrom. The several purchasers of lots — and — shall enter into covenants with the purchasers of the said other lots, for the payment of the said annual sums; which covenants shall be prepared by and at the expense of the covenantees, and shall be accepted by them as a sufficient indemnity against the said annual sums respectively.

No. XVI.

MISCELLANEOUS CONDITIONS.

MISCELL-
LANEOUS.

I. THE vendors reserve to themselves the liberty of offering the premises for sale either in one lot or in the several lots specified in the particulars, or of offering for sale any two or more of such lots together, and after having tried any of the aforesaid methods of sale, of offering the premises for sale according to any other of the said methods, as they shall think proper; and in every case each bidder must abide by his bidding, and the highest bidder, according to the method of sale ultimately adopted in any case, shall be the purchaser.

Special method
of selling by
auction.

II. ALL the lots are sold subject to existing tenancies, and to all rights of way and other easements (if any) affecting the same.

That lots are
sold subject to
tenancies,
rights of way,
&c.

III. THE tenant's fixtures shall be paid for by the purchaser at a valuation, to be made by two indifferent persons, or their umpire, to be appointed in the same manner as the referees, or their umpire mentioned in the — Condition.

Fixtures to be
valued.

IV. ONE of the vendors, the owner of one undivided sixth part of the property offered for sale, being an infant aged eighteen years, the other vendors will covenant with the purchasers for the confirmation of the sale by the infant when he shall attain the age of twenty-one years; and in the meantime one-sixth of the purchase-money shall be set apart and invested in Consols in the names of two trustees, one to be nominated by such other vendors and the other to be nominated by the purchaser, in trust for the infant if he shall confirm the sale upon attaining twenty-one, and if not, then in trust for the purchaser; and the dividends of the stock shall in the meantime be accumulated, and follow the ultimate destination of the principal stock.

As to one of
the vendors
being an
infant.

V. THE vendors, being a tenant for life (aged — years), and remainderman, the purchaser shall take the property subject to the succession duty, which will become payable upon the death of the tenant for life (u).

Succession
duty.

(u) Where land is sold by a tenant for life and remainderman, it is considered that in the absence of special stipulation the purchaser is entitled

Succession
duty on sale by

MISCELLANEOUS.
 As to exceptions in documents.
 Insufficient stamp.

VI. WHEREVER in any document there is an exception of any hereditaments which have been previously sold, it shall be assumed that such excepted hereditaments did not include any part of the property comprised in the particulars.

VII. THE purchaser shall make no objection on the ground that a certain indenture of mortgage, dated —, is insufficiently stamped, and shall not require any further stamp duty to be paid thereon.

Stamps.

VIII. IF any deeds or documents executed before the 16 May, 1888, shall be found to be unstamped or insufficiently stamped, which, however, is not known to be the case, no objection or requisition shall be made on that account.

Stamps.

IX. THE stamping or re-stamping of any instruments executed before the 16 May, 1888, which may be found to be unstamped or insufficiently stamped, shall be paid for by the purchaser, if he shall require the same to be done.

Registration in Middlesex.

X. THE purchaser shall make no objection on the ground that any deeds or documents have not been registered in the Middlesex Registry.

tenant for life and remainderman.

to require that the succession duty, which will become payable on the death of the tenant for life, shall be compounded for by the vendors in advance under sect. 41 of the Succession Duties Act (16 & 17 Vict. c. 51). See Dart, V. & P. 543, fourth edition, p. 2. It seems desirable to throw the burden on the purchaser. See observations on the subject in a note to "Agreements," Precedent No. XI., *infra*, pp. 106, 107.

A G R E E M E N T S.

By the Statute of Frauds (*a*), it is enacted that no action shall be brought whereby to charge any person upon any contract or sale of lands, tenements, or hereditaments, or interest in or concerning them, unless the agreement upon which such action shall be brought, or some memorandum thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorised (*b*).

By Statute of Frauds agreements as to land to be in writing, signed by the party to be charged, or his agent.

It is proposed in this Dissertation to consider, I. What is an interest in or concerning lands within the statute. II. What is necessary to constitute a binding contract. III. The effect of part performance to take a contract out of the statute; and, IV. Some of the consequences arising from a contract.

I. What is an interest in or concerning lands within the statute.

Whatever property would upon the death of an owner of land go to his executors as emblements is not within the statute. Upon this principle it has been decided that the statute does not apply to an agreement for the sale of growing crops of potatoes (*c*), turnips (*d*), wheat or barley (*e*), these being produced

What property is within the statute.

As to growing crops.

(*a*) 29 Car. 2, c. 3, s. 4.

(*b*) See *Smith v. Webster*, 3 Oh. D. 49.

(*c*) *Parker v. Staniland*, 11 East, 362; *Evans v. Roberts*, 5 B. & C. 829; *Warwick v. Bruce*, 2 Mau. &

Selw. 205.

(*d*) *Dunne v. Ferguson*, Hayes, 540.

(*e*) *Jones v. Flint*, 10 Ad. & Ell. 753; *Mayfield v. Wadsley*, 3 B. & C. 357.

Timber, fruit,
grass.

by the labour and industry of the cultivator, and it is immaterial whether the crops are to be gathered by the vendor or the purchaser. But standing timber, fruit on a tree, grass (*h*), and the like, are considered natural growths and part of the land, until severed from it. If, then, timber or a crop of fruit or grass is sold while growing, and it is intended that it shall remain on the land and derive further nutriment and benefit therefrom, and be eventually cut or gathered by the purchaser, part of the subject-matter of the contract is an interest in land, and the case is within the statute. If, however, the thing sold is to be delivered by the vendor, and the purchaser has no interest in it until severed, or if it is to be removed, whether by the buyer or seller, at once or so soon afterwards that any further benefit to it from its remaining on the land does not appear to be intended, then the sale is a mere chattel, and not within the statute (*i*).

Right to shoot.

The grant of a right to shoot over land is an interest in land within the 4th section (*k*).

Tenant's
fixtures.

A tenant's fixtures may be sold by parol agreement (*l*).

Agreement for
lease.

Although by sect. 2 of the Statute of Frauds a lease for any term not exceeding three years where the reserved rent amounts to two-thirds at least of the improved value may be made by parol, an *agreement* for the sale of such a lease must be in writing (*m*).

Shares in
mining and
railway com-
panies.

Shares in a mining company worked on the cost-book principle (*n*), and shares in a railway company made personal estate by the Railway Act (*o*), are not within the statute.

(*h*) Although the above-mentioned things cannot in strictness be said to be produced spontaneously, yet the expense and labour employed in their original planting or sowing bears so small a proportion to their natural growth, that they are not considered *fructus industriales*.

(*i*) *Marshall v. Green*, 1 O. P. D. 35; *Smith v. Surman*, 9 B. & C. 829.

(*k*) *Webber v. Lee*, 9 Q. B. D. 315.

(*l*) *Hallen v. Runder*, 1 Cro. M. & B. 266; *Lee v. Gaskell*, 1 Q. B. D. 700.

(*m*) *Barrett v. Rolph*, 14 M. & W. 348.

(*n*) *Watson v. Spratley*, 10 Exch. 22; *Powell v. Jessop*, 18 C. B. 336.

(*o*) *Duncuft v. Albrecht*, 12 Sim. 189.

An entire agreement for the sale of property, of which only part is within the statute, cannot be supported as to that part which is not within the statute (*p*). Agreement where part of property is within the statute.

II. *What is necessary to constitute a binding contract within the statute.* What constitutes a contract.

The party to be charged must sign the agreement, either personally or by some other person by him lawfully authorised. Signature of agreement.

For the purposes of the 4th section it is sufficient that the agent should be appointed by parol, although for the purposes of the 1st section the appointment must be *by writing*. The 1st section relates to instruments less executory in their character than agreements.

An agent for the sale or purchase of property cannot bind his principal beyond the authority given him (*q*), and the agency may be revoked by the principal at any time before an agreement is signed, or in the case of an auction before the fall of the hammer (*r*). A land or house agent to whom general instructions are given to find a purchaser is not authorised to sign a contract on the vendor's behalf (*s*). Authority of agent.

The whole agreement is required to be in writing, so that the document, whether it be a letter, receipt, or more formal memorandum, must in itself embody the whole terms of the contract, or refer to some writing, conditions, particulars of sale, or other papers which do (*t*). Where the memorandum signed by the party to be charged refers to another document, it The whole agreement must be in writing.

(*p*) Sug. V. & P. 102, and cases there cited.

(*q*) *Olding v. Smith*, 16 Jur. 497; *Chinnock v. Marchioness of Ely*, 11 Jur. 329.

(*r*) Dart, 209, 6th ed.

(*s*) *Hamer v. Sharp*, L. R. 19 Eq. 108.

(*t*) *Allen v. Bennet*, 3 Taunt. 169; *Dobell v. Hutchinson*, 3 Ad. & Ell. 355; *Laythoarp v. Bryant*, 2

Bing. N. C. 735; *Clinan v. Cooke*, 1 Scho. & Lef. 22; *Powell v. Dillon*, 2 Ball & B. 416; *Warner v. Willington*, 3 Drew. 523; *Langstaff v. Nicholson*, 25 Beav. 160; *Ridgway v. Wharton*, 6 Ho. of L. C. 38; *Bishton v. Whitmore*, 8 Ch. D. 467; *Cave v. Hastings*, 7 Q. B. D. 175; *Long v. Millar*, 4 C. P. D. 450; *Stubbs v. Watson*, 28 Ch. D. 305.

may be proved by parol evidence that a certain document is the one referred to (*u*).

Vendor's name need not be stated in contract if otherwise sufficiently described.

It is not necessary in order to satisfy the statute that the vendor's name should be stated in the written contract, if he is sufficiently described to admit of his being identified by extrinsic evidence, and the same rule applies to the description of the property sold. The term "vendor" or "vendor's solicitor" is not a sufficient description (*v*); but it has been held to be sufficient to describe the vendor as "the proprietor," or "the trustee for sale" (*x*), and the property as "the property purchased for £420, at the Sun Inn, Paxton, on the above date" (*y*).

A contract for lease must mention time for commencement.

In a contract for a lease, it is necessary in order to satisfy the Statute of Frauds that the time for its commencement should be mentioned (*z*).

What is a sufficient signing.

A signature at the beginning of the agreement is a sufficient signing to take it out of the statute; as when a person drew up an agreement in his own handwriting beginning "I, A. B., agree," and left a place for a signature at the bottom but never signed it, it was considered to be a memorandum in writing within the statute (*a*). But in the case of articles of agreement containing the terms of a contract, and purporting to be made between certain persons whose names were stated at the commencement, and ending with "As witness our hands," without being followed by any name or signature, it was decided that there was not a sufficient signing within the statute (*b*). So the alteration of a draft conveyance will not take the case out of the statute (*c*).

Sales by auction within statute.

Sales by auction are within the statute. The auctioneer in such cases is held to be agent both for the

(*u*) *Morris v. Wilson*, 5 Jur. N. S. 168.

(*v*) *Sale v. Lambert*, L. R. 18 Eq. 1; *Jarrett v. Hunter*, 34 Ch. D. 182.

(*x*) *Sale v. Lambert*, L. R. *ubi supra*; *Rossiter v. Miller*, 3 App. Cas. 1124; *Catling v. King*, 5 Ch. D. 660.

(*y*) *Shadlow v. Cotterell*, 20 Ch. D. 90.

(*z*) *Marshall v. Burrigge*, 19 Ch. D. 233.

(*a*) *Esp. N. P. Cas.* 190; *Saunders v. Jackson*, 2 Bos. & Pul. 238; *Bleakley v. Smith*, 11 Sim. 150.

(*b*) *Hubert v. Treherne*, 3 Man. & G. 743.

(*c*) *Hawkins v. Holmes*, 1 P. Wms. 770.

vendor and purchaser (*d*); and his signature of the name of the highest bidder is sufficient to satisfy the requisitions of the statute. If the highest bidder is only an agent, the signature by the auctioneer of the agent's name will be binding on the principal (*e*).

The receipt of the vendor, or, in the case of an auction, of the auctioneer, for the purchase-money or deposit, or the entry by the auctioneer of the account of the sale in his books, is sufficient; but a receipt for a deposit, in order that it should amount to an agreement, must expressly or by reference state the price, or what proportion the deposit bears to the price (*f*).

Receipt for purchase-money or entry by auctioneer in his books sufficient.

Where a contract in writing exists which binds one party to a contract, any subsequent note in writing signed by the other is sufficient to bind him, provided it either contains in itself the terms of the contract or refers to any writing which contains them (*g*).

Letters may constitute a sufficient agreement within the statute, provided they contain the names of the parties, the amount and nature of the consideration to be paid on one side and received on the other, and a reasonable description of the subject-matter of the contract.

When letters constitute an agreement.

A letter is binding on the writer from the time at which it is posted (*h*), although it may not be received until the following day (*i*); and if the writer requires that his offer should be accepted by a particular day, the acceptance of the offer will be binding on him, although he may not receive it until some time after the day specified, in case the delay has been occasioned by the Post Office, or by the misdirection of the letter (*k*).

The answer to the written offer must be a simple acceptance of the terms proposed, without the intro-

(*d*) Sug. V. & P. 119.
(*e*) *White v. Proctor*, 4 Taunt. 209; *Kenworthy v. Schofield*, 2 B. & C. 945.
(*f*) *Blagden v. Bradbear*, 12 Ves. 466; *Emerson v. Heelis*, 2 Taunt. 38; *Gosbell v. Archer*, 2 Ad. & Ell. 500; *Clerk v. Wright*, 1 Atk. 12; *Shadlow v. Cotterell*, 20 Ch. D. 90;

Stubbs v. Watson, 28 C. D. 305.
(*g*) *Dobell v. Hutchinson*, 3 Ad. & Ell. 355.
(*h*) *Kennedy v. Lee*, 3 Mer. 441; *Thomas v. Blackman*, 1 Col. 301.
(*i*) *Potter v. Sanders*, 6 Hare, 1.
(*k*) *Adams v. Lindsell*, 1 B. & Ald. 681.

duction of any new or different term (*l*); and if the proposal is once refused, it cannot afterwards be revived by tendering a simple acceptance of it (*m*).

If the letter requires the other party to supply a term in the agreement, there must be a special acceptance in writing containing that term (*n*).

Offer may be retracted before acceptance.

An owner having made a written offer to sell, may at any time before acceptance retract the offer, or add new terms to it (*o*).

The agreement must contain all necessary terms.

If an agreement for sale is entered into by letters or otherwise, containing all the necessary terms, so as to satisfy the Statute of Frauds, such an agreement is binding, although it may contain a provision that a more formal agreement is to be prepared and signed by both parties (*p*). But if an offer to purchase is made, and such offer is accepted subject to a provision as to a contract, then the stipulation as to the contract is a term and condition of the acceptance, and there is no agreement independent of that stipulation (*q*). If an offer is made and accepted, subject to the title being approved by the purchaser's solicitor, it is apprehended that such a reservation does not prevent the contract from being considered as complete, and would not enable the purchaser to refuse specific performance, if the vendor has a good title and the purchaser's solicitor unreasonably and improperly refuses to approve it (*r*).

Effect of offer being accepted subject to title being approved by purchaser's solicitor.

Notice by company to treat with landowner, constitutes relation of vendor and purchaser, to what extent.

A notice given by a railway company to treat with a landlord for the purchase of land for the purposes of their Act constitutes, as between the landowner and the company, the relation of vendor and purchaser to a certain extent and for certain purposes; and some of the consequences which flow from an actual con-

(*l*) *Holland v. Eyre*, 2 Sim. & Stu. 194; *Appleby v. Johnson*, L. R. 9 C. P. 152.

(*m*) *Hyde v. Wrench*, 3 Beav. 334.

(*n*) *Boys v. Ayerst*, 6 Madd. 316.

(*o*) *Honeyman v. Marriott*, 6 Ho. of L. Cas. 112; *Dickinson v. Dodds*, 2 Ch. D. 463.

(*p*) *Fowle v. Freeman*, 9 Ves. 351; *Kennedy v. Lee*, 3 Mer. 441; *Thomas v. Dering*, 1 Keen, 729;

Bonnewell v. Jenkins, 8 Ch. D. 70;

(*q*) *Wood v. Midgley*, 5 D. M. & G. 41; *Chinnock v. Marchioness of Ely*, 4 D. J. & S. 638; *Rossiter v. Miller*, 5 Ch. D. 648; *Crossley v. Maycock*, L. R. 18 Eq. 180; *Winn v. Bull*, 7 Ch. D. 29.

(*r*) *Hussey v. Horne Payne*, 4 App. Ca. 311; *Clack v. Wood*, 9 Q. B. D. 275.

tract also follow upon the notice to treat, such as, that the particular lands which the company are to take and the landowner to give up after certain steps prescribed by the Act shall have been taken, are fixed, and neither party can get rid of the obligation, the one to take, and the other to give up, such lands, but in no other sense and to no further extent does the notice constitute a contract, at least on the part of the landowner (s). Thus it has been held, that if an owner dies after receiving the usual notice to treat, but before the price is fixed, the purchase-money goes to his heir, and not to his personal representative (t). But as soon as the price is fixed, the relation of the parties as vendor and purchaser is as fully constituted as in the case of a formal and regular agreement (u).

III. *The effect of part performance to take a case out of the statute.*

It is a settled rule of the Court to decree specific performance of a verbal agreement to sell or lease land, notwithstanding the statute, where there has been what is called part performance, *i.e.*, some act resulting from the agreement and unequivocally referable to it, which so changes the position of the parties that one of them would suffer detriment if the agreement were not carried out (x).

What is part performance.

The common instance of an act of part performance is delivery of possession. The acknowledged possession of a stranger in the land is not explicable except on the supposition, and is therefore evidence, of some agreement, and the Court considers itself at liberty,

Delivery of possession,

(s) *Haynes v. Haynes*, 1 Drew. & Sm. 426, and the cases there cited; *Gardner v. Charing Cross Railway Company*, 2 Johns. & Hem. 248; *Re the Battersea Park Acts*, 32 Beav. 591; *Guest v. Poole & Bournemouth Railway Company*, L. R. 5 C. P. 553.

(t) *Re the Battersea Park Acts*, 32 Beav. 591.

(u) *The Regent's Canal Company*

v. Ware, 23 Beav. 575; *Mason v. The Stokes Bay Pier and Railway Company*, 32 L. J. Ch. 110; *Metropolitan Railway Company v. Woodhouse*, 11 Jur. 296; *Harding v. Metropolitan Railway Company*, L. R. 7 Ch. 154; *Watts v. Watts*, *ib.* 17 Eq. 217.

(x) *Gunter v. Halsey*, Amb. 58; *Whitbread v. Buckhurst*, 1 B. C. C. 415.

or change of
tenure is suf-
ficient.

Payment of
part of the
purchase-
money not
sufficient.

Acts not
changing the
position of the
parties insuf-
ficient.

Whether ex-
penditure of
money in
improvements
where there
has been no
change of
possession, is
sufficient,
quære.

without infringing the statute, to enquire what the terms of that agreement are (*y*). If at the time of the contract for sale the purchaser was already in possession as tenant, the Court cannot interfere, because in that case the possession is explicable without supposing any agreement; but if in the case of an existing lease the lessor verbally agrees to renew at a higher rent, and the higher rent is actually paid, such payment indicating a change of tenure has been held equivalent to a change of possession (*z*).

The payment of part of the purchase-money, or even (according to the balance of judicial authority) of the whole of it, is not an act of part performance such as will take a case out of the statute. The payment of money is an equivocal act, and not (in itself) indicative of any contract affecting land (*a*).

So, acts merely auxiliary to a contract, and which do not change the position of the parties, *e.g.*, the delivery of an abstract, the measuring of the land, the payment of auction duty (*b*), are not part performance within the meaning of the rule.

Whether the mere expenditure of money on the faith of a parol contract where there has been no change of possession, takes a case out of the statute, as where a landlord agrees to sell to a tenant in possession, or to grant him a renewed lease at the same rent, and the tenant, on the faith of the agreement, spends money in building, is doubtful. There are *dicta* in the affirmative (*c*), but principle would seem to be on the negative side, for the expenditure is consistent with the present position of the parties,

(*y*) *Morphett v. Jones*, 1 Sw. 172; *Dale v. Hamilton*, 5 Hare, 380; *Maddison v. Alderson*, 8 Ap. Ca. 467. It will be borne in mind that the 4th section of the statute does not make a parol contract void, but only provides that no action shall be brought to charge a person upon it. When there has been an overt act afterwards, such as delivery of possession, the equity arises out of this overt act, and not out of the parol

agreement taken by itself.

(*z*) *Wills v. Stradley*, 3 Ves. 378.

(*a*) *Dale v. Hamilton*, *ubi supra*; *Maddison v. Alderson*, 7 Q. B. D. 174; 8 App. Ca. 467; *Humphries v. Green*, 10 Q. B. D. 148.

(*b*) *Buckmaster v. Hanop*, 7 Ves. 341. Sug. V. & P. (13th ed.), p. 123.

(*c*) *Sutherland v. Briggs*, 1 Hare, 26.

and does not necessarily indicate any change in that position (*d*).

It has been said that the doctrine rests on the principle that equity will not permit the statute to be an instrument of fraud, and that it would be unjust to allow a man who has taken advantage of a contract to refuse to perform his part of it. This must be taken to mean not that a Court of equity can, on the ground of a supposed fraud or injustice, overrule the express terms of an Act of Parliament, but that, whenever there are circumstances, such as change of possession, which enable the Court to enforce the contract, without infringing the statute, it avails itself of those circumstances in order to prevent the fraud or injustice above referred to (*e*).

Principle on which doctrine rests.

In order to enable the Court to interfere, the person against whom the parol contract is sought to be enforced must have been a party to the act or acts of part performance forming the ground of the action. Thus a verbal agreement by a tenant for life to grant a lease in execution of a power, followed by delivery of possession and expenditure by the intended lessee, cannot be enforced against the remainderman, unless it can be shown that such expenditure was permitted by him with a knowledge that the agreement was only a verbal one (*f*).

Doctrine cannot be applied against a person not a party to the act of part performance.

The doctrine is not confined to sales or leases, but extends to any agreement affecting land. Thus where a father verbally promised in consideration of his daughter's marriage, to give her a house as a wedding present, and immediately after the marriage he put his daughter and her husband into possession; it was held that the possession being referable to the verbal promise, the case was taken out of the statute (*g*). On the other hand, in a case where a person induced a woman to live with him as house-

Doctrine applies to any agreement relating to land, and not merely to sales and leases.

(*d*) *Farmer v. Dawson*, 14 Ves. 386.

(*e*) *Mundy v. Joliffe*, 5 M. & C. 167; *Alderson v. Maddison*, 5 Ex. D. 293.

(*f*) *Blore v. Sutton*, 3 Mer. 237; *Trotman v. Fleisher*, 3 Giff. 1.

(*g*) *Ungley v. Ungley*, 5 Ch. D. 887.

keeper without wages for many years by a verbal promise to make a will leaving her a life interest in some land, it was held that the woman's service not being necessarily referable to any contract affecting land, there was no part performance to take the case out of the statute (*h*).

IV. *Some of the consequences of a contract for sale.*

Consequences
of contract.
Purchaser
becomes owner
from date of
contract.

From the date of a valid contract for sale the purchaser becomes in equity the owner of the land, and the vendor becomes entitled to the money or other consideration to be paid for the purchase, subject, however, to the obligation of the vendor to show that he has a title.

Loss happen-
ing after con-
tract falls on
purchaser.

It follows, that any loss or deterioration arising to the property after the contract and before the conveyance, falls upon the purchaser. Thus, where houses contracted to be sold were afterwards burnt down, the contract was enforced against the purchaser, although the vendor had since the contract allowed the insurance to expire without giving him notice (*i*); and for the same reason, on the purchase of a life annuity, the purchaser must bear any loss arising from the death of the *cestui que vie* before the conveyance (*k*). On the other hand the purchaser is entitled to any benefit which may accrue to the estate from circumstances happening between the contract and conveyance, as by the dropping of lives on the purchase of a reversionary interest, or by an increase or improvement in the value of the land (*l*), and where he purchases in consideration of a life annuity to be paid to the vendor, the contract will be enforced against the latter, although the annuity drops by the death of the *cestui que vie* before the conveyance (*m*). In these

(*h*) *Maddison v. Alderson*, 8 App. Ca. 467.

(*i*) *Paine v. Miller*, 6 Ves. 349.
See also *Poole v. Shergold*, 2 Bro. C. C. 118.

(*k*) *Kenney v. Wexham*, 6 Mad.

355.

(*l*) *Harford v. Purrier*, 1 Mad. 539.

(*m*) *Mortimer v. Capper*, 1 Bro. C. C. 156; *Jackson v. Lever*, 3 Bro. C. C. 60.

cases, however, it is material that the vendor and purchaser have respectively performed their portion of the contract up to the time of the event happening (*n*). It is to be observed that a contract for the sale of a house does not pass to the purchaser the right to a sum paid to the vendor on account of damage by fire occurring between the date of the contract and the completion of the purchase under an insurance effected before the contract (*o*).

Who entitled to insurance moneys in case of fire between contract and completion.

As a general rule, a vendor not having a good title at the time of the contract, may cure the defect at any time before the day appointed for completion; and if he brings an action for specific performance, at any time before the chief clerk's certificate of title, unless time is made of the essence of the contract, or there has been unreasonable delay (*p*). But this indulgence will not be given to a vendor who enters into a contract for the sale of an estate with a knowledge that he has no right to sell, and cannot in the ordinary course of law or equity acquire such right (*q*). Moreover it is conceived that even when a vendor acts *bond fide*, a purchaser may on discovering the want of title repudiate the contract, but in this case he must do so at once, and not act as if he considered the contract to be subsisting. Thus in *Hoggart v. Scott* (*r*), the executors of a last surviving trustee sold under the misapprehension that a power of sale given to the trustees had devolved on them. They afterwards procured themselves to be appointed trustees, and thus acquired the power, and the steps taken for that purpose were taken with the purchaser's knowledge and acquiescence. It was held that the purchaser might have retired from the contract as soon as the want of title

At what time a title must be made.

(*n*) *Counter v. McPherson*, 5 Moore, 83.

(*o*) *Rayner v. Preston*, 18 Ch. D. 1. But if the insurance money is paid to the vendor, he will be bound to repay it to the insurance company out of the purchase-money, if the latter is paid to him in full. *Castellain v. Preston*, 11 Q. B. D. 380.

(*p*) *Wynn v. Morgan*, 7 Ves. 202; *Mortlock v. Buller*, 10 Ves. 315; *Boehm v. Wood*, 1 J. & W. 419; *Eyston v. Simonds*, 1 Y. & C. N. C. 608; *Garnett v. Acton*, 28 Beav. 337.

(*q*) *Sug. V. & P.* 181; *Chamberlain v. Lee*, 10 Sim. 460.

(*r*) 1 Russ. & M. 293.

was discovered, but as he had not taken that course, specific performance was decreed against him. In *Eyston v. Simonds* (s), the title was bad by reason of the alienage of a person through whom the vendor claimed. The purchaser by his own inquiries ascertained the defect of title, but did not, until after some months of negotiation, repudiate the contract. Pending the investigation in the Master's office, the vendor acquired a good title, and under the circumstances he was held to be entitled to a decree. And in a case where it was found that a small portion of an estate contracted to be sold was the property of another person, the Court would not discharge the purchaser from the contract without giving the vendor an opportunity of acquiring a title to that portion (t). So also where a tenant for life entered into a contract for the sale of an estate in fee and the purchaser proceeded with the investigation of the title with full notice of the defect, specific performance was decreed, although the consent of the parties entitled in remainder was not obtained until the hearing (u). In *Adams v. Brooke* (x), the vendors were trustees with power to sell with the consent of the tenant for life. Upon a bill filed by the trustees for specific performance, it was held that the plaintiffs must prove that the requisite consent was given before the filing of the bill, there being no contract without such consent.

Doubtful title.

It was formerly the practice of the Court of Chancery not to oblige a purchaser to take a title which might be considered doubtful, and in one case it was laid down that the opinion of the judge in its favour must be so clear, that it does not apprehend that another judge would form a different opinion (y). But this doctrine has been qualified by recent cases. In *Alexander v. Mills* (z), James, L. J., observed: "We do not say that there may not be cases, in which a ques-

(s) 1 Yo. & C. N. C. 608.

(t) *Chamberlain v. Lee*, 10 Sim. 444.

(u) *Salisbury v. Hatcher*, 2 Yo. & C. N. C. 54.

(x) 1 Yo. & C. N. C. 627.

(y) *Pyrke v. Waddingham*, 10 Hare, 1; *Rogers v. Waterhouse*, 4 Drew. 329; *Mullings v. Trinder*, L. R. 10 Eq. 449.

(z) L. R. 6 Ch. 131.

tion of law may be considered so doubtful, that a Court would not, on its own view, compel a purchaser to take a title: still, as a general and almost universal rule, the Court is bound as much between vendor and purchaser as in every other case to ascertain and determine what the law is, and to take that to be the law which it has so ascertained and determined. The exceptions to this will probably be found to consist, not in pure questions of legal principle, but in cases where the difficulty and the doubt arise in ascertaining the true construction and legal operation of some ill-expressed and inartificial instrument." The present rule seems to be this, that where the doubt involves some general principle of law, it is the duty of the Court to remove it by deciding the point; but if it is one as to the proper construction of some ill-expressed instrument, on which opinions might well differ, the Court will not as a general rule decide it in the absence of interested persons, and will not force the purchaser to accept the title (a). A Court of Appeal, whose opinion is in favour of a title, will not treat it as doubtful, merely because the inferior Court has taken a different view and decided against it (b).

The taking of possession by the purchaser is an equivocal act, but does not of itself amount to an acceptance of the title. In every case it is a question depending upon the circumstances whether the conduct of the purchaser is inconsistent with an intention to call for the title, or to insist on objections to it (c). In *Fleetwood v. Green* (d), specific performance was decreed against a purchaser who had remained in possession for a considerable time after the delivery of an abstract without making any objection; and in *Burnell v. Brown* (e), a purchaser was held to have waived any objection on the ground of the property being subject

Taking possession when an acceptance of title.

(a) *Palmer v. Locke*, 18 Ch. D. 381; *Collier v. McBean*, 1 Ch. 81.

(b) *Shepherd v. Doolun*, 3 D. & War. 1; *Beioley v. Carter*, L. R. 4 Ch. 230; *Alexander v. Mills*, *ubi supra*; *Bell v. Holtby*, 15 Eq. 178, 193.

(c) *Simpson v. Sadd*, 4 De G. M. & G. 672.

(d) 15 Ves. 594.

(e) 1 Jac. & W. 168. See also *Blatchford v. Fitzpatrick*, 6 Beav. 233.

to a right of sporting, by taking possession with knowledge of the existence of such right.

In a recent case it was laid down that if a contract contains no stipulation that possession may be taken before completion, and the purchaser takes possession, knowing that there are defects of title which are irremovable, the taking of possession is a waiver, but not so if the defects are removeable (*f*).

Measure of damages on breach of contract for sale.

The general rule of law that where a person makes a contract and breaks it, he must pay the whole damage sustained in consequence, does not apply to contracts for the sale of real estate, in respect of which a special rule has been established by the case of *Flureau v. Thornhill* (*g*), viz., that on a breach of a contract of this nature arising from want of title, the purchaser can only recover by way of damages the expenses of investigating the title, and is not entitled to compensation for the loss of the bargain (*h*).

Effect of bankruptcy on unprofitable contracts.

The 55th section of the Bankruptcy Act, 1883 (*i*), provides that when any part of the property of a bankrupt consists of unprofitable contracts, the trustee may by writing signed by him at any time within three months after the first appointment of a trustee disclaim such property, yet so that the Court may on the application of any person who is as against the trustee entitled to the benefit or subject to the burden of a contract made with the bankrupt, make an order rescinding the contract on such terms as to payment by or to either party of damages for non-performance of the contract or otherwise as to the Court may seem equitable.

Effect of death of either party after contract.

A binding contract for sale is not avoided by the

(*f*) *Re Gloag & Miller's Contract*, 23 Ch. D. 320.

(*g*) 2 Bl. Rep. 1078; *Walker v. Moore*, 10 B. & C. 416. See *Engell v. Fitch*, L. R. 4 Q. B. 659; *Pounsett v. Fuller*, 17 C. B. 660; *Sikes v. Wild*, 30 L. J. Q. B. 325; *Robinson v. Harman*, 1 Exch. 850.

(*h*) The rule laid down in *Flureau v. Thornhill* has been recently fully considered and confirmed by the

House of Lords in *Bain v. Fothergill*, L. R. 7 H. L. 158, and an exception attempted to be engrafted on it by *Hopkins v. Grazebrook*, 6 B. & C. 31, disapproved. See *Burrow v. Scammell*, 19 Ch. D. 175; *Rowe v. School Board of London*, 36 Ch. D. 619; *Royal Bristol Permanent Building Society v. Bomash*, 35 Ch. D. 390.

(*i*) 46 & 47 Vict. c. 52.

death of either party before completion, and on the death of the vendor his executors are entitled to the purchase-money (*k*). On the death of the purchaser, his heir or devisee is entitled to have the estate conveyed to him, and in either case the estate itself will be the primary fund for the payment of the unpaid purchase-money (*l*). In a case where a verbal contract for sale was entered into and the vendor died intestate, and his heir, who was also administrator, executed a conveyance of the estate in pursuance of the parol contract, it was held that the purchase-money belonged to the next of kin of the deceased (*m*).

A general devise contained in a will made since the Wills Act, passes land contracted to be purchased after the date of the will; and a contract for the sale of land in equity revokes a previous devise made by the vendor (*n*); and it seems clear that the purchase-money will pass under his will as part of his personal estate (*o*).

Effect of contract on devise.

If a vendor died before completion, leaving an infant heir or devisee, the Court would not consider him a trustee for the purchaser within the meaning of the Trustee Act, 1850, until he had been declared to be so in a suit for specific performance (*p*). But on a sale to a railway company, where the company had paid the purchase-money and taken possession, Wood, V.-C., treated the case as an exception, the sale being compulsory, and made a vesting order on petition (*q*); and Romilly, M. R., made a similar order, on a sale to a railway company, where the purchase-money had not been paid and the title had not been accepted before the vendor's death (*r*). It is difficult to see that the fact that a sale to a railway company is compulsory

Vendor dying leaving infant heir.

(*k*) *Broome v. Monck*, 10 Ves. 597; *Garnett v. Acton*, 28 Beav. 333; *Hudson v. Cook*, L. R. 13 Eq. 417; *Harding v. Harding*, *ib.* 493.

(*l*) See Dissertation on Mortgages, *infra*, sect. 7.

(*m*) *Frayne v. Taylor*, 33 L. J. Ch. 228.

(*n*) *Farrar v. Earl Winterton*, 5 Beav. 1; *In re London Bridge Ap-*

proaches Act, 13 Sim. 569.

(*o*) 1 Jar. on Wills, 148; *Knollys v. Shepherd*, 1 J. & W. 499; *Dart*, 205, 6th Edition.

(*p*) *Re Carpenter, Kay*, 418.

(*q*) *Russell's Estate*, 12 Jur. N. S. 225.

(*r*) *Re Lowry's Will*, L. R. 15 Eq. 78.

would furnish a sufficient distinction for this purpose.

Personal representatives of deceased vendor can convey.

In the event of a vendor dying before completion after the 31st December, 1881, it is provided by the 4th section of the Conveyancing Act, 1881, that his personal representatives shall, by virtue of the Act, have power to convey the land to the purchaser.

STAMPS ON AGREEMENTS.

Stamps on agreements.

AN agreement cannot be offered in evidence unless it is duly stamped. If the subject-matter is not of the value of £5, or where the agreement is for the hire of any labourer, artificer, manufacturer, or menial servant, or for the sale of any goods, wares, or merchandize, or is between the master and mariner of any ship or vessel for wages on any voyage coastwise from port to port in the United Kingdom, no stamp is required, but in other cases the agreement must be stamped with 6d. (s).

Stamp on purchase of several lots at auction.

A purchaser of several lots at an auction is considered to have entered into an equal number of agreements for the purchase of the same lots, so that the agreement must bear as many stamps as there are lots, assuming that the purchase-money for each lot amounts to £5 (t). * But the value of the lots must be taken separately, so that if the purchase-money for no single lot amounts to £5, the agreement would not be chargeable with any stamp.

If the agreement consists of several letters, it is sufficient to stamp one (u).

(s) See 33 & 34 Vict. c. 97, under the head "Agreement or memorandum of agreement," and sect. 36.

(t) *James v. Shore*, 1 Stark. N. P. C. 426; *Watling v. Horwood*, 12 Jur. 48.

(u) *Stead v. Liddard*, 1 Bing. 196.

No. I.

AGREEMENT *for the Sale of Freehold Property* (x).

FOR SALE OF
FREEHOLDS.

MEMORANDUM OF AGREEMENT made the — day of —, BETWEEN A. B. of, &c. (*vendor*), of the one part, and Parties. C. D. of, &c. (*purchaser*), of the other part :—

I. THE said A. B. (hereinafter called the vendor) agrees to sell, and the said C. D. (hereinafter called the purchaser) agrees to purchase, the hereditaments described in the schedule hereto, and the inheritance thereof in fee simple in possession, [subject to the existing tenancy thereof, and to all easements (if any) affecting the same], at the price of £—, [to be paid as follows, that is to say, the sum of £— as a deposit immediately after the signing of this agreement, and the residue thereof on the completion of the purchase] (y).

Agreement
to sell and
purchase.

II. THE purchase shall be completed on the — day of — at the office of Mr. — (the vendor's solicitor), and the purchaser shall then have possession of the said premises, all outgoings up to that time being cleared by the vendor. If the purchase shall not be completed on the — day of — next, the purchaser shall pay to the vendor interest on [the residue

Completion of
purchase.

(x) Where the agreement for sale is by a married woman who has married since 1882, she will be described as "A. B., the wife of H. B., of &c., to whom she was married since the 31st day of December, 1882." In other respects the agreement will be in the same form as Precedent No. I., as to freeholds; Precedent No. II., *infra*, p. 96, as to copyholds; and Precedent No. III., *infra*, p. 97, as to leaseholds, substituting "she" for "he," and "her" for "him," when necessary. If she was married before 1883, but has acquired the property to be sold since the 31st December, 1882, the date of the marriage will be omitted in the description of the vendor.

Proper form of
agreement for
sale by a
woman
married after
1882.

If the vendor is a tenant for life selling under the powers of the Settled Land Act, it is unnecessary to state this in the contract, which may be in the same form as if he were absolute owner.

(y) The words within brackets will be omitted, where no deposit is paid. If the vendor is a tenant for life, the deposit (if any) should be paid to a stakeholder, and in that case the following words should be substituted for those in brackets:—"of which £— shall be paid to X. Y., of, &c., as a stakeholder, by way of deposit, immediately after the signing of this agreement, and the remainder shall be paid on the completion of the purchase."

**FOR SALE OF
FREEHOLDS.****Commence-
ment of title.**

of] the purchase-money after the rate of £4 per cent. per annum from that day until the completion of the purchase (z).

III. THE title to the said premises shall commence with, &c., (a).

IV. (*Condition as to identity. — See Conditions of Sale, supra, p. 67.*)

V. THE description of the property in the schedule hereto is believed and shall be deemed to be correct, and no objection shall be made or compensation claimed on account of an error of description as to quantity [*or, measurement*] or otherwise if any such should be found.

(*or the following.*)

**Errors of
description.**

Va. THE quantities (b) of the several lands [*or, the measurements of the said premises*] are believed and shall be deemed to be correctly stated in the schedule hereto, and no objection shall be made or compensation claimed on account of an error

Interest.

(z) On sales by auction the rate of interest is usually fixed at 5 per cent., but on a sale by private contract a purchaser may fairly object to pay more than 4 per cent.; and, even at this reduced rate, the condition will in many cases operate unfairly on the purchaser. The delay in completion may arise from the state of the title or the slowness of the vendor's solicitor in replying to the requisitions, or from many causes over which the purchaser can exercise no control; and he may find himself in the position of having to pay interest while his money is lying idle. Under these circumstances a prudent purchaser will often be advised, either to object to the condition altogether, or to insist on a proviso being added to the following effect: "Provided always, that if the delay in completion shall arise from the state of the title, or from any other cause not being the purchaser's fault, the purchaser shall be at liberty to place [the remainder of] his purchase-money on a deposit account at the — Bank, or on any securities which he may think fit, in his own name and at his own risk, and give notice thereof to the vendor, and thereupon the vendor shall be entitled to receive from the purchaser such interest only as shall be actually produced by such deposit or investment." If nothing is said about interest, the purchaser's obligation in this respect will be left to depend on the rule of equity—viz.: That from the day fixed for completion the purchaser is entitled to receive the rents, and must pay interest at 4 per cent. on his purchase-money; but unless the delay is his own fault, he may relieve himself of the liability to interest by giving the vendor notice that his money is lying idle. See *supra*.

(a) Insert after the 3rd article any special conditions which the state of the title may require. For forms of such conditions, see *supra*, p. 60. If the vendor has a registered title, the 3rd clause will be similar to the 4th clause in Precedent No. III. of Conditions of Sale, *supra*, p. 43, and clauses 4 to 8 of the above Precedent will be omitted.

(b) If the quantities or measurements are stated in the schedule as "more or less," or "or thereabouts," the first part of this condition will be unnecessary, and where the vendor is satisfied that the description given must be correct, the whole condition may be omitted.

in quantity. If any other error or omission be found in the schedule before the completion of the contract, the same shall not annul the sale, but a fair compensation shall be made in respect thereof to or by the purchaser, as the case may require, the amount to be settled (in case of difference) by two referees, one to be appointed by each party, or by an umpire, to be appointed by the two referees before they proceed in the reference.

FOR SALE OF
FREEHOLDS.

VI. ALL objections and requisitions in respect of the title or the abstract shall be stated in writing, and sent to the office of the said Mr. — (the vendor's solicitor) within — days from the delivery of the abstract, and all objections and requisitions not sent within that time shall be considered to be waived, and for the purpose of any objection or requisition the abstract shall be deemed perfect, if it supplies the information suggesting the same, though otherwise defective; and if the purchaser shall insist on any objection or requisition in respect of the title, which the vendor shall be unable or unwilling to remove or comply with, the vendor shall be at liberty (notwithstanding any intermediate negotiation in respect thereof, or any attempt to remove or comply with the same), by notice in writing, to rescind this agreement, and the purchaser shall forthwith return to the vendor the abstract of title, and any other papers in his possession belonging to the vendor, and he shall have no claim on the vendor for costs or otherwise.

Objections and
requisitions.

VII. UPON payment of the purchase-money at the times and in manner aforesaid the vendor shall make and execute to the purchaser a proper assurance of the premises, such assurance to be prepared by and at the expense of the purchaser, and to be left by him not less than seven days before the said — day of — at the office aforesaid for execution by the vendor (c).

Vendor to
execute
assurance.

[VIII. If the said premises or any part thereof shall be destroyed or damaged by fire before the completion of the purchase, the moneys payable under the existing insurance of the

Insurance
money to be
applied in
reinstating
premises, if

(c) Where the sale is made by trustees, Clause No. 6, in Precedent No. VI. *infra*, will be substituted for the above. If the title deeds relate to other property they will be retained by the vendor under the Vendor and Purchaser Act, s. 2, and no special condition to this effect is necessary.

**FOR SALE OF
FREEHOLDS.**
burnt before
completion.

said premises in the — office, shall be applied in reinstating the same, or shall be paid to the purchaser at his option (d).]

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. II.

**FOR SALE OF
COPYHOLDS.**

AGREEMENT for the SALE of COPYHOLD PROPERTY.

Parties.

Agreement
to sell and
purchase.

MEMORANDUM OF AGREEMENT made the — day of —, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part:—

I. THE said A. B. (hereinafter called the vendor) agrees to sell, and the said C. D. (hereinafter called the purchaser) agrees to purchase, the hereditaments described in the schedule hereto, being copyhold of the manor of —, in the county of —, and the inheritance thereof, according to the custom of the said manor, in possession, subject to the customary rents, suits and services [and subject also to the existing tenancy thereof], at the price of £— [to be paid, &c. (*as in Article I. of Precedent No. I., supra*, p. 93)].

(*Remaining conditions as in Precedent No. I.*)

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

(d) This clause will be inserted where the property sold consists of a house or buildings which have been insured by the vendor. See *Rayner v. Preston*, 18 Ch. D. 1.

No. III.

AGREEMENT *for the SALE of LEASEHOLD PROPERTY.*

FOR SALE OF
LEASEHOLDS.

MEMORANDUM OF AGREEMENT made the — day of —, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part:—

Parties.

I. THE said A. B. (hereinafter called the vendor) agrees to sell, and the said C. D. (hereinafter called the purchaser) agrees to purchase, all that messuage or dwelling house being No. —, in — Street, held by lease, dated the — day of —, for the unexpired residue of a term of — years computed from the — day of —, subject to the yearly rent of £—, and to the covenants and conditions contained in the lease and on the lessee's part to be observed and performed at the price of £— [to be paid, &c., as in *Precedent No. I., supra*, p. 93].

Agreement
to sell and
purchase.

II. (*Condition as to completion of the purchase and interest.— See Precedent No. I., supra*, p. 90.)

III. THE title shall commence with the said lease (which has been produced to the purchaser), and the production of the receipt for the last payment of rent which shall have become due thereunder shall be deemed conclusive evidence that all the covenants and conditions therein have been observed and performed up to the day of completion, or that all breaches thereof (if any) have been waived (*e*). (*Insert here any other special conditions which the state of the title may require*) (*f*).

Commence-
ment of title.

(*e*) When the leasehold property is valuable, being subject only to a ground rent, and the lease is a recent one, and the lessor not a person whose title is well known, a prudent purchaser will insist on the contract containing a stipulation enabling him to require the production of some evidence of the lessor's title, particularly as, according to a recent decision, the statutory rule does not protect him from the application of the doctrine of constructive notice as regards equities which he would have discovered had he duly investigated the title. See *Patman v. Harland*, 17 Ch. D. 353. If the vendor is unable to comply with such a stipulation, not having himself inquired into the title when he took the lease, the purchaser should be advised by his solicitor as to the risk which he incurs, and must be left to decide for himself whether in the face of such risk he desires to proceed with the purchase.

When lease-
hold is valu-
able, contract
should enable
purchaser to
require produc-
tion of
lessor's title.

(*f*) If the vendor has a registered title, clause 3 will be similar to clause 4 of *Precedent No. 4, Conditions of Sale, supra*, p. 44, and the remaining clauses of the above *Precedent* will be omitted, except that relating to "errors of description."

**FOR SALE OF
LEASEHOLDS.**Vendor to
execute assign-
ment to pur-
chaser.

IV., V. (*Conditions as to errors in description and objections and requisitions.—See Precedent No. I., supra, pp. 94, 95.*)

VI. ON payment of the purchase-money at the time and in manner aforesaid the vendor shall make and execute a proper assignment of the said premises to the purchaser, such assignment to be prepared by and at the expense of the purchaser, and to be left by him not less than seven days before the said — day of —, at the office aforesaid, for execution by the vendor.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. IV.

**FOR SALE OF
LEASEHOLDS
AND FIXTURES.**

AGREEMENT for the SALE of LEASEHOLD PROPERTY held by an UNDERLEASE, and the TENANT'S FIXTURES.

Parties.

Agreement
to sell and
purchase.Commence-
ment of title,
&c.

MEMORANDUM OF AGREEMENT, made the — day of —, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part:—

I. THE said A. B. (hereinafter called the vendor) agrees to sell, and the said C. D. (hereinafter called the purchaser) agrees to purchase, the leasehold messuage and premises described in the schedule hereto, for the unexpired residue of the term of ninety-nine years, wanting the last ten days thereof, granted therein by the indenture of underlease mentioned in the said schedule, subject to the rent reserved by the said indenture of underlease, and the covenants and conditions therein contained and on the lessee's part to be observed and performed, and also the tenant's fixtures in and about the said premises, at the price of £— [to be paid, &c. (*as in Precedent No. I., supra, p. 93*)].

II. THE title shall commence with the said underlease, and inasmuch as copies of the said underlease and of the superior lease have been produced to the purchaser before the signing of this agreement, he shall be deemed to have full notice of the

contents of both instruments. The production of the last receipt, &c. (*the rest to be the same as Precedent No. III*).

FOR SALE
OF LEASEHOLDS
AND FIXTURES.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

THE messuage or dwelling-house being No. —, — Street, in the parish of —, with the stables and appurtenances thereto belonging, now in the occupation of —, which premises were, by an indenture of underlease, dated the — day of —, and made, &c., demised unto the said — (*original sublessee*), his executors, administrators, and assigns, for the term of ninety-nine years, wanting the last ten days thereof, computed from the — day of —, at the yearly rent of £—, and subject to the covenants and conditions contained in the said indenture of underlease, and on the underlessee's part to be observed and performed.

No. V.

AGREEMENT for the SALE of a LEASEHOLD HOUSE and SHOP and the STOCK IN TRADE and GOODWILL of the BUSINESS carried on there.

LEASEHOLD
SHOP AND
BUSINESS.

MEMORANDUM OF AGREEMENT made the — day of —, BETWEEN A. B. of, &c. (*vendor*), of the one part, and Parties. C. D. of, &c. (*purchaser*), of the other part:—

I. THE said A. B. (hereinafter called the vendor) agrees to sell, and the said C. D. (hereinafter called the purchaser) agrees to purchase, the leasehold messuage or tenement and shop, being No. —, — Street, in the town of —, held for the residue of a term of — years granted therein by an indenture of lease, dated, &c., at the yearly rent of £—, and subject to the lessee's covenants and conditions contained in the said indenture of lease, and also the goodwill (*h*) of the business of —, now

Agreement for
sale and pur-
chase of lease-
hold premises
and goodwill
for a fixed sum,

(*h*) If it is intended that the vendor shall be at liberty, after the sale, to carry on a similar business in the neighbourhood, the expression "good- When vendor is to be allowed

LEASEHOLD
SHOP AND
BUSINESS.

and tenant's
fixtures and
stock in trade
at a valuation.

carried on by the said A. B. on the said premises, at the price of £——. The vendor also agrees to sell, and the purchaser agrees to purchase, the tenant's fixtures in and about the said premises, and the stock in trade and book and other debts belonging and due and owing respectively to the said A. B., and the benefit of all contracts and engagements entered into with him in respect of the said business, at a sum to be determined by valuation as hereinafter is mentioned.

Deposit and
completion of
purchase.

II. THE purchaser shall, immediately after the signing of this agreement, pay to the vendor the sum of £—— by way of deposit. The purchase shall be completed on the —— day of —— next, at the office of, &c., and the purchaser shall, as from that day, have possession of the said premises, and be the proprietor of the said business subject to the following conditions.

Valuation of
fixtures, &c.

III. (*Agreement as to commencement of title, &c., supra*, p. 97.)

IV. THE tenant's fixtures, stock in trade, and effects, book and other debts, shall be valued according to the value of the same on the —— day of —— next, and the valuation shall be made by L. M., of, &c., who is appointed for this purpose by the vendor, and N. O., of, &c., who is appointed for this purpose by the purchaser, or in case the said valuers shall disagree, then by P. Q., of, &c., who has been appointed umpire by the valuers. If either of the valuers shall die before the valuation is completed, or shall refuse to act, another valuer shall be appointed in his place by the party by whom the deceased or refusing valuer was appointed; and if the umpire shall die before the valuation is completed, or shall refuse to act, the valuers shall appoint another umpire.

Purchase-
money to be

V. THE purchaser shall pay the remainder of his purchase-

to carry on
business in
neighbour-
hood.

will" should be qualified by some explanation in the contract or particulars of sale. Thus, in *Johnson v. Helleby*, 34 L. J. Ch. 179, the question arose how the goodwill of a business, which upon the death of one of the partners had been directed to be sold as a going concern, should be described, and more particularly whether the existence of the right of the surviving partner to carry on a like trade in the same town should be mentioned in the particulars; and the Court directed that the following words should be inserted at the foot of the advertisement for sale:—"This sale will give to the purchasers both the premises on which the business has been carried on and the benefit to be derived from the habit of customers resorting to the said premises; but will not prevent persons formerly interested in the said business, or those who may represent them, from carrying on the same business."

money (including the amount of the aforesaid valuation) at the times following: (that is to say,) one third part thereof on the — day of — next, one third part thereof on the — day of —, 18—, and the remaining one third part thereof on the — day of —, 18—, and the instalments of purchase-money for the time being remaining unpaid shall bear interest after the rate of £5 per cent. per annum, computed from the said — day of — next.

LEASEHOLD
SHOP AND
BUSINESS.

paid by instal-
ments.

VI. UPON the payment on the — day of — next of the instalment of purchase-money hereby made payable on that day, the vendor shall make and execute to the purchaser a proper assignment of the said premises, such assignment to be prepared by and at the expense of the purchaser, and the vendor shall, in and by such assignment, covenant with the purchaser not to carry on a similar business in the said town of —, or within a distance of — miles therefrom.

Vendor to
assign on
completion.

VII. AT the same time with the execution of the said assignment, the purchaser, and two sureties to be approved of by the vendor, shall execute to the vendor their joint and several bond, in a sufficient penalty, conditioned for the payment of the remaining instalments of the said purchase-money, and the interest thereof, at the times and in the manner above provided; and the purchaser shall also make and execute to the vendor a proper and effectual mortgage of the said leasehold premises, and the stock in trade and effects of the said business, for further securing the payment of the said instalments and interest, such mortgage to contain such powers and provisions as the vendor may reasonably require.

Purchaser to
secure unpaid
instalments
of purchase-
money by bond
and mortgage.

VIII. IN the meantime, and until the completion of the said purchase, the business shall be carried on by the vendor as at present, for his own benefit, but the purchaser shall act as his manager, and shall receive the weekly sum of £— by way of salary as such manager.

How business
is to be carried
on in mean-
time.

IX. THE purchaser has examined the title of the vendor to the said leasehold premises, and he is satisfied therewith, and hereby undertakes to accept the same as it stands.

Purchaser
to accept
lessor's title.

IN WITNESS, &c.

No. VI.

SALE OF
FREEHOLDS,
COPYHOLDS,
AND
LEASEHOLDS.

AGREEMENT *for the SALE by TRUSTEES of an ESTATE*
comprising FREEHOLDS, COPYHOLDS, and LEASEHOLDS.

Parties.

Agreement
to sell and
purchase.

MEMORANDUM OF AGREEMENT made the — day of —, BETWEEN A. B. of, &c., and C. D. of, &c. (*vendors*), of the one part, and E. F. of, &c. (*purchaser*), of the other part:—

I. THE said A. B. and C. D. (hereinafter called the vendors) agree to sell, and the said E. F. (hereinafter called the purchaser) agrees to purchase, at the price of £—, ALL the messuages, lands, and hereditaments, situate in the parish of —, in the county of —, described in the first part of the schedule hereto, and the inheritance thereof in fee simple in possession; AND ALSO the messuages, lands and hereditaments, being copyhold of the manor of —, in the said county, described in the second part of the said schedule, and the customary inheritance thereof in fee simple in possession; AND ALSO the messuages, lands and hereditaments, situate in the said parish of —, described in the third part of the said schedule for all the residue now unexpired of the term of — years, granted therein by an indenture of lease, dated, &c., and made, &c., subject as to the said copyhold hereditaments to the customary rents and services, and as to the said leasehold hereditaments to the rent reserved by the said indenture of lease, and the covenants and conditions therein contained, and on the lessee's part to be observed and performed, [and subject also as to all the said hereditaments to the existing tenancies thereof, mentioned in the said schedule, and to all rights of way and water and other easements (if any) affecting the same].

Valuation of
timber.

II. IN addition to the said sum of £—, the purchaser shall pay for all timber, and timber-like trees, tellers, pollards, and saplings, down to the value of 1s. per stick inclusive, standing or growing upon the said premises, according to a valuation to be made in manner following (that is to say): Each party shall by writing appoint a valuer and give notice thereof by writing to the other party within fourteen days after the signing of this agreement, and the valuers thus appointed shall, before they

proceed to act, appoint by writing an umpire, and the two valuers, or if they disagree, their umpire, shall make the valuation. If either party shall neglect to appoint a valuer or to give notice thereof to the other party for the space aforesaid, the valuer appointed by the other party shall make a final valuation alone. The expression "the purchase-money" used in this agreement shall include the amount of the valuation to be made under this article.

SALE OF
FREEHOLDS,
COPTHOLDS,
AND
LEASEHOLDS.

III., IV., V. (*Conditions as to completion of the purchase and payment of interest—commencement of title and time for making requisitions.—See Precedent No. I., pp. 93, 94, 95.*)

VI. UPON payment of the purchase-money at the time and in manner aforesaid, the vendors (who are trustees) shall make and execute a proper assurance of the said premises to the purchaser, such assurance to be prepared by and at the expense of the purchaser, and to be left at the office aforesaid at least seven days before the said — day of — next, and the same shall include the usual statutory acknowledgment as regards documents retained by the vendors as relating also to other property, but not an undertaking for their safe custody. The concurrence of the persons beneficially interested in the purchase-money shall not be required.

Vendors to
execute assur-
ance to pur-
chaser.

(*Other conditions as in Precedent No. I.—See supra, pp. 94, 95.*)

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. VII.

AGREEMENT for the SALE of FREEHOLDS subject to the APPROVAL of the COURT.

FOR SALE OF
FREEHOLDS
SUBJECT TO
APPROVAL OF
COURT.

MEMORANDUM OF AGREEMENT made the — day of —, BETWEEN A. B. of, &c. (*vendtor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part:—

Parties.

I. SUBJECT to the approval of the Chancery Division of the High Court of Justice, the said A. B. (hereinafter called the

Subject to
approval of
Court, agree-

FOR SALE OF
FREEHOLDS
SUBJECT TO
APPROVAL OF
COURT.

ment to sell
and purchase.

Vendor to take
steps to obtain
approval of
this agreement
by the Court.

Agreement
to be void
unless ap-
proval of Court
obtained
within a given
time.

vendor) agrees to sell, and the said C. D. (hereinafter called the purchaser) agrees to purchase, &c.—(*See Precedent No. I., supra*, p. 93.)

II. to VII., as in *Precedent No. I.*

VIII. THE vendor shall at his own expense forthwith take and carry to completion all necessary steps and proceedings, and use his best exertions to obtain by means of an application to the Court its approval of this agreement.

IX. THIS agreement shall be void unless the vendor shall at his own expense, within — calendar months from the date of these presents, obtain the approval by the Court thereof, either in its general form and terms, or with such variations therein as shall within the like time be assented to by the vendor and purchaser.

IN WITNESS, &c.

No. VIII.

FOR SALE OF
LIFE ESTATE.

AGREEMENT for the SALE of a LIFE ESTATE in FREEHOLDS.

Parties.

Agreement
to sell and
purchase.

MEMORANDUM OF AGREEMENT made the — day of —, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part:—

I. THE said A. B. (hereinafter called the vendor) agrees to sell, and the said C. D. (hereinafter called the purchaser) agrees to purchase, ALL THAT the estate for life, without impeachment of waste, of the vendor in All, &c. (*parcels*), at the price of £— [to be paid as follows, &c.—(*See Precedent No. I., supra*, p. 97)].

Other conditions as in Precedent No. I., so far as applicable, adding the following:—

Agreement
not to be
rendered void
by death of
vendor.

THIS agreement shall not be rendered void, or be in anywise affected by the death of the vendor before the said — day of — next.

IN WITNESS, &c.

No. IX.

AGREEMENT *for the Sale of a REVERSIONARY ESTATE*
in FREEHOLDS. FOR SALE OF
REVERSIONARY
ESTATE.

MEMORANDUM OF AGREEMENT made the — day of —, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. Parties of, &c. (*purchaser*), of the other part:—

I. THE said A. B. (hereinafter called the vendor) agrees to sell, and the said C. D. (hereinafter called the purchaser) agrees to purchase, ALL THOSE (*parcels*), and the inheritance thereof in fee simple, free from incumbrances (subject nevertheless to the estate therein of G. H. of, &c., during his life, which estate is without impeachment of waste), at the price of £—.

Agreement
to sell and
purchase.

II. THE purchase shall be completed on the — day of — next, at the office of Mr. —, the vendor's solicitor, and if from any cause whatever the purchase is not completed on that day, the purchaser shall pay interest on the said purchase-money after the rate of £— per cent. per annum, computed from that day until the completion of the purchase.

Completion of
purchase.

III., IV. (*Conditions as to commencement of title and time for making requisitions, as in Precedent No. I., supra, pp. 94, 95.*)

V. ON payment of the purchase-money at the time and in manner aforesaid the vendor shall execute to the purchaser a proper assurance of the said premises, subject to the said life estate, such assurance to contain a covenant by the purchaser for the payment of the succession duty, which shall become payable upon the death of the said G. H., and for indemnifying the vendor therefrom (i): and the said assurance shall be prepared by and at the expense of the purchaser, and shall be left by him not less than seven days before the said — day of — next, at the office aforesaid, for execution by the vendor.

Vendor to
execute assur-
ance.

VI. THE documents of title relating to the said premises are in the possession of the said G. H. as tenant for life, and on his death such of the said documents as relate exclusively to the

As to deeds in
possession of
tenant for life.

(i) As between vendor and purchaser of a reversion, the purchaser must pay the succession duty. *Cooper v. Trewby*, 28 Beav. 194.

**FOR SALE OF
REVERSIONARY
ESTATE.**

Agreement not
to be rendered
void by death
of tenant for
life.

said premises shall be delivered to the purchaser, and such of them as relate also to other property of the vendor, shall be retained by him, and he shall give to the purchaser the usual statutory acknowledgment and undertaking in respect thereof.

VII. THIS agreement shall not be rendered void by the death of the said G. H. before the said — day of —.

VIII. (*Condition as to errors of description.*—See *supra*, p. 94.)

IN WITNESS, &c.

No. X.

**FOR SALE BY
TENANT FOR
LIFE AND RE-
MAINDERMAN.**

**AGREEMENT for SALE by TENANT FOR LIFE and RE-
MAINDERMAN.**

Parties.

MEMORANDUM OF AGREEMENT made the — day of —, BETWEEN A. B. of, &c. (who is tenant for life of the hereditaments hereby agreed to be sold), of the first part, C. D. of, &c. (who is tenant in fee simple in remainder of the said hereditaments), of the second part, and E. F. of, &c. (*purchaser*), of the third part :—

Agreement
to sell and
purchase.

I. THE said A. B. and C. D. (hereinafter called the vendors) agree to sell, and the said E. F. (hereinafter called the purchaser) agrees to purchase, the hereditaments described in the schedule hereto, and the inheritance thereof in fee simple in possession, subject to the succession duty (if any) to become payable on the death of the said A. B., and which duty if it shall become payable will be at the rate of £— per cent., at the price of £—.

(*Remainder of precedent same as Precedent No. I. (k).*)

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

Stipulation as
to succession
duty, on sale

(*k*) If A., tenant for life, and B., tenant in remainder, join in conveying the fee simple in possession to C. a purchaser, succession duty will become payable under the 15th section of the Act on the death of A., at the same

No. XI.

AGREEMENT for the SALE of FREEHOLDS which are
subject to a PERPETUAL yearly RENTCHARGE.

AGREEMENT
FOR SALE
SUBJECT TO
FEE FARM.

MEMORANDUM OF AGREEMENT made the — day of
—, BETWEEN A. B. of, &c. (*vendor*), of the one part, and Parties.
C. D. of, &c. (*purchaser*), of the other part:—

I. THE said A. B. (hereinafter called the vendor) agrees to sell, and the said C. D. (hereinafter called the purchaser) agrees to purchase, the hereditaments described in the schedule hereto, and the inheritance thereof in fee simple, subject to a fee farm rent of £10 created by an indenture dated the — day of —, and certain covenants and conditions contained in the same indenture as to buildings and otherwise, at the price of £—, to be paid on the — day of —, at the office of Mr. —, the vendor's solicitor, at which time and place the purchase is to be completed, and the purchaser shall then have possession of the said premises, all outgoing up to that time being cleared by the vendor. If the purchase shall not be completed on the — day of — next the purchaser shall pay to the vendor interest on the purchase-money after the rate of £4 per cent. per annum from that day until the completion of the purchase.

Agreement
to sell and
purchase.

Interest.

II. (*Conditions as to completion, suprd, p. 93.*)

III. THE title shall commence, &c. (*special conditions as to title*). The receipt for the last payment of the said rent of £10

Receipt for
last payment
of rent to be
evidenced.

rate as if no alienation had been made, provided that no new succession is created in the meantime. Thus, if C. is living without having again aliened, at the death of A., C. will have to pay duty at the same rate as B. would have had to pay, but the actual sum to be paid will be different, as it will be calculated on the value of C.'s (not B.'s) life. But if C. dies before A., his heir or devisee will have to pay duty at once as on a succession derived from C., and on A.'s subsequent death no further duty will be payable. *In re Cooper and Allen's Contract*, 4 Ch. D. 802. Although the liability to duty is contingent only, it is conceived that, in the absence of stipulation, a purchaser from tenant for life and remainderman is entitled to insist on its being commuted before its completion, under sect. 41 of the Act. It seems desirable, where the duty would be heavy, to guard against such a requisition by a clause in the contract, because, although the purchaser will probably give less on account of the liability, the deduction, having regard to the contingency that the duty may not become payable at all, ought not to be so much as would have to be paid for the commutation.

by tenant for
life and re-
mainderman.

AGREEMENT
FOR SALE
SUBJECT TO
FEE FARM.

which shall have become due prior to the completion of the purchase shall be accepted by the purchaser as conclusive evidence of the performance of the covenants and conditions contained in the said indenture of the — day of — up to the completion of the purchase, and the vendor shall not be required to deduce the title to the said rent, or to show that the person giving such receipt is the present owner thereof.

(Other conditions as in Precedent No. I.) (1).

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. XII.

AGREEMENT for the SALE of an ADVOWSON.

FOR SALE OF
ADVOWSON. •

Parties.

Agreement
to sell and
purchase.

MEMORANDUM OF AGREEMENT made the — day of —, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part:—

I. THE said A. B. (hereinafter called the vendor) agrees to sell, and the said C. D. (hereinafter called the purchaser) agrees to purchase, ALL THAT the advowson and perpetual right of presentation of and to the rectory and parish church of —, in the county of —, and the inheritance thereof in fee simple, free from incumbrances, at the price of £—, to be paid as follows (that is to say), the sum of £—, part thereof, immediately after the signing of this agreement, and the sum of £—, residue thereof, on the — day of — next, at the office of Messrs — (the vendor's solicitors), at which time and place the purchase is to be completed.

(1) Adding at the end of Clause VII. as follows:

The assurance shall contain a covenant by the purchaser to indemnify the vendor against the covenants entered into by the latter in the above-mentioned indenture.

II. THE title shall commence, &c. (as in *Precedent No. I.*, *supra*, p. 94, adding at the end—), and all recitals and statements in any document dated twenty years and upwards prior to the date of this agreement shall be conclusive evidence of the facts or matters recited or stated therein or to be assumed or implied therefrom (m).

FOR SALE OF
ADVOWSON.

Commence-
ment of title.

III. (Condition as to time for making requisitions, *supra*, p. 95.)

IV. UPON payment of the purchase-money at the times and in manner aforesaid the vendor and all other necessary parties (if any) shall execute a proper assurance of the said advowson to the purchaser, such assurance to be prepared by and at the expense of the purchaser, and to be left by him at least seven days before the said — day of —, at the office aforesaid, for execution by the vendor.

Vendor to
execute
assurance.

V. [If through the default or neglect of either party the purchase shall not be completed on the said — day of —, then the other party may, by notice in writing, rescind this agreement, and in such case the defaulting or neglecting party shall pay and reimburse to the other party the costs and expenses which shall have been previously incurred by him in or about this agreement, or the carrying of the same into effect, or otherwise in relation thereto (n).]

Power to
either party
to rescind
contract in a
certain case.

VI. IF the purchase shall not be completed on the — day of — next, and if this agreement shall not be rescinded under Article V., the purchaser shall pay interest on the residue of the purchase-money, after the rate of £— per cent. per annum, from the said — day of — next, until the completion of the purchase.

Interest.

VII. IF the said benefice shall become vacant before the said — day of — next, the vendor shall, upon payment of the purchase-money, present thereto the nominee of the purchaser.

On vacancy
of benefice
before comple-
tion vendor to
present
nominee of
purchaser.

IN WITNESS, &c.

(m) The rules in section 2 of the Vendor and Purchaser Act, 1874, appear not to apply to advowsons.

(n) This clause will only be inserted when expressly stipulated for.

No. XIII.

FOR SALE OF
NEXT PRE-
SENTATION.

AGREEMENT *for the SALE of a NEXT PRESENTATION.*

Parties.

Agreement
to sell and
purchase.

Vendor to
execute
assurance.

As to vacancy
before comple-
tion.

Stipulation in
contract for
sale of advow-
son, to provide
for possibility
of incumbent
being made a
bishop.

MEMORANDUM OF AGREEMENT made the — day of —, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part:—

I. THE said A. B. (hereinafter called the *vendor*) agrees to sell, and the said C. D. (hereinafter called the *purchaser*) agrees to purchase, ALL THAT the next presentation to the rectory and parish church of —, in the county of —, of which the Rev. — is the present incumbent, at the price of £—, to be paid as follows, the sum of £—, part thereof, immediately after the signing of this agreement, and the sum of £—, residue thereof, on the — day of — next, at the office of Messrs. — (the *vendor's* solicitors), at which time and place the purchase is to be completed.

II., III. (*As in last Precedent.*)

IV. UPON payment of the purchase-money at the times and in manner aforesaid, the *vendor* and all other necessary parties (if any) shall execute a proper assurance of the said next presentation to the *purchaser*, such assurance to be prepared by and at the expense of the *purchaser*, and to be left by him at least seven days before the said — day of —, at the office aforesaid, for execution by the *vendor*.

V., VI. (*Conditions as to rescinding the agreement on non-completion at the time specified, and as to interest as in last Precedent.*)

VII. IF the said benefice shall become vacant before the said — day of — next, the *vendor* shall, on payment of the purchase-money, present thereto the nominee of the *purchaser* (o).

IN WITNESS, &c.

(o) If after the sale of a next presentation the incumbent is promoted to a bishopric so that the next turn devolves on the Crown, the *purchaser* will, in the absence of a stipulation to the contrary, be entitled to the next presentation after that by the Crown. It is obvious, however, that such a postponement of the *purchaser's* right to present would seriously diminish the value of his purchase, and would in many cases entirely defeat the object with which he has purchased. Whenever, therefore, there is a probability of the present incumbent being made a bishop, a prudent *purchaser* will stipulate that such an event shall put an end to the contract, and obtain security for the repayment of his purchase-money. The best mode of effecting this object would be to make the arrangement provided for by Precedent XV., *infra*.

No. XIV.

AGREEMENT *for the Sale of an Advowson, or NEXT PRESENTATION, and of an ANNUAL SUM equal to INTEREST on the PURCHASE-MONEY until a VACANCY (p).*

FOR SALE OF
ADVOWSON AND
ANNUAL SUM.

MEMORANDUM OF AGREEMENT made the — day of —, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part:—

Parties.

I. THE said A. B. (hereinafter called the vendor) agrees to sell, and the said C. D. (hereinafter called the purchaser), agrees to purchase, for the sum of £—, ALL THAT, &c. (*describe advowson, or next presentation, as the case may be*), and also an annual sum of £—, being equal to interest on the said sum of £— after the rate of £4 per cent. per annum, to be paid for such period and in such manner, and to be so secured as hereinafter mentioned, the said purchase-money to be paid on the — day of — next, at the office of Mr. — (the vendor's solicitor), at which time and place the purchase is to be completed.

Agreement
to sell and
purchase.

II. UPON payment of the purchase-money as aforesaid the vendor and all other necessary parties (if any) shall make and execute a proper assurance of the said (*advowson or next presentation, as the case may be*), and shall also give and execute to the purchaser his (the vendor's) bond in a sufficient penalty condi-

Vendor to
execute assur-
ance of advow-
son, and also
bond to secure
annual sum.

(p) It is sometimes made part of the arrangement on the purchase of an advowson or next presentation, that the purchaser shall receive interest on his purchase-money until a vacancy. Such an arrangement may be effected in two modes, (1) by the vendor giving to the purchaser his bond for an annual sum equal to interest at the rate stipulated on the purchase-money; or (2) by investing the purchase-money in the names of trustees, upon trust to pay the income thereof to the purchaser until a vacancy. Such an arrangement has been held valid when the vendor is not the incumbent (*Sweet v. Meredith*, 3 Giff. 610); and it is conceived, though it has never been expressly decided, that the circumstance of the vendor being the incumbent would make no difference, provided that the interest made payable by the vendor during his incumbency does not exceed the ordinary rate of interest. If, however, the vendor, the incumbent, should afterwards resign, and thus become relieved from further payment of interest, a serious question might arise as to whether such resignation were not simoniacal within the meaning of the Act 31 Eliz. c. 6, s. 7.

Arrangement
that purchaser
shall receive
interest on the
purchase-
money until a
vacancy.

FOR SALE OF
ADVOWSON AND
ANNUAL SUM.

tioned for the payment to the purchaser, his executors and administrators, of the said annual sum of £—, commencing from the — day of — next, and to be payable until the day on which the said benefice shall next become vacant, and to be payable by equal half-yearly payments on the — day of — and the — day of — in every year, the first of such payments to be made on the — day of — next (g). The assurance and bond to be executed as aforesaid shall be prepared by and at the expense of the purchaser, and shall be left by him at least seven days before the said — day of — next, at the office aforesaid, for execution by the vendor.

(*Remaining clauses as in Precedent No. XII.*)

IN WITNESS, &c.

No. XV.

FOR SALE OF
ADVOWSON AND
INVESTMENT
OF PURCHASE-
MONEY UNTIL
VACANCY.

AGREEMENT *for the SALE of an ADVOWSON, or NEXT PRESENTATION, where it is part of the ARRANGEMENT that the PURCHASE-MONEY shall be INVESTED until a VACANCY, and the INCOME RECEIVED by the PURCHASER (r).*

Parties.

MEMORANDUM OF AGREEMENT made the — day of —, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part:—

Agreement
to sell and
purchase.

I. THE said A. B. (hereinafter called the vendor) agrees to sell, and the said C. D. (hereinafter called the purchaser) agrees to purchase, ALL THAT, &c. (*describe advowson, or next presentation, as the case may be*), at the price of £—: the purchase to be completed in the manner hereinafter mentioned, on the — day of — next, at the office of Mr. —, the vendor's solicitor.

II., III. (*Conditions as to commencement of title and time for making requisitions—as in Precedent No. I.*)

Purchase-
money to be
invested.

IV. UPON the — day of — next, the purchaser shall pay the said purchase-money of £— to two trustees, one to

(g) Six calendar months after the day appointed for completion.

(r) See p. 110, *supra*, note (o).

be nominated by the vendor and the other by the purchaser, upon trust to invest the same in £2½ per cent. Consolidated Stock, and pay the dividends thereof to the purchaser, his executors or administrators, until the said benefice shall next become vacant, and subject to the trust aforesaid, and also to Article VIII., in trust for the vendor, his executors, administrators and assigns. And upon payment of the said purchase-money as aforesaid, the vendor shall execute a proper assurance, &c., *supra*, p. 109.

FOR SALE OF
ADVOWSON AND
INVESTMENT
OF PURCHASE-
MONEY UNTIL
VACANCY.

V., VI., VII. (*Power to rescind contract—as to interest—and on vacancy of benefice before completion vendor to present nominee of purchaser, as in Precedent No. XII.*)

VIII. If the next presentation shall devolve on the Crown by reason of the promotion of the present incumbent to a bishopric, this agreement shall be void, and the Consolidated Stock, representing the purchase-money, shall thereupon be transferred to the purchaser as his absolute property (s).

Provision in
case next pre-
sentation
devolves on
Crown.

IN WITNESS, &c.

No. XVI.

AGREEMENT for SALE where PART of the PURCHASE-MONEY is to REMAIN on MORTGAGE of the PROPERTY for a CERTAIN PERIOD.

FOR SALE
WHERE PART
OF PURCHASE-
MONEY
REMAINS ON
MORTGAGE.

MEMORANDUM OF AGREEMENT made the — day of —, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part:—

Parties.

I. THE said A. B. (hereinafter called the vendor) agrees to sell, and the said C. D. (hereinafter called the purchaser) agrees to purchase, ALL THOSE, &c. (*parcels*), and the inheritance thereof in fee simple in possession, at the price of £3,000.

Agreement
to sell and
purchase.

II. to IV. (*Conditions as to commencement of title, misdescriptions, and time for making requisitions, supra*, pp. 94, 95.)

(s) See p. 100, *supra*, note (o).

FOR SALE
WHERE PART
OF PURCHASE-
MONEY
REMAINS ON
MORTGAGE.

Time for
completion of
purchase.

Vendor to
execute
assurance.

Part of pur-
chase-money
to remain on
mortgage.

Mortgage to
be executed

V. THE purchase shall be completed on the — day of — next, and from that day the purchaser shall be entitled to the rents and profits of the said premises, all outgoings up to that day being discharged by the vendor. If from any cause whatever the purchase shall not be completed on the said — day of —, the purchaser shall pay to the vendor interest on the said purchase-money from the said — day of — until the completion of the purchase, after the rate of £4 per cent. per annum.

VI. UPON the completion of the purchase, the vendor shall execute to the purchaser a proper assurance of the said premises; and as some of the documents of title relate to other property of the vendor, as well as to the said premises hereby agreed to be sold, the same shall be retained by him upon his giving to the purchaser by such assurance an acknowledgment of his right to production and delivery of copies thereof, and an undertaking for their safe custody. The said assurance shall be prepared by and at the expense of the purchaser.

VII. UPON the completion of the purchase, the purchaser shall pay to the vendor the sum of £1,000, part of the said purchase-money, and the sum of £2,000 (residue thereof) shall remain on mortgage of the said premises, at interest after the rate of £4 per cent. per annum, payable half-yearly. And by the mortgage-deed the said principal money shall be made payable on the — day of — next, but subject to provisoes precluding the vendor from calling in the same during a term of ten years, computed from the — day of — next, in case interest shall be regularly paid in the meantime within thirty days after the several half-yearly days of payment thereof respectively, and in case the purchaser shall duly observe the covenants (other than the covenants for payment of principal and interest) to be contained in the mortgage-deed; and also precluding the purchaser from compelling the vendor to receive the said principal money before the expiration of the said term. And the said mortgage shall also contain covenants by the purchaser for the payment of the principal money and interest, and such provisions for better securing the payment of the principal money and interest, as the vendor shall reasonably require.

VIII. THE said mortgage shall be prepared by the vendor at

the expense of the purchaser, and shall be executed by the purchaser immediately after the execution by the vendor of the assurance of the said premises to the purchaser. All the documents of title which but for such mortgage the purchaser would be entitled to have delivered to him upon the completion of the purchase, shall be retained by the vendor as mortgagee, and the transaction shall be treated in all respects as if the purchaser had duly paid the whole of the purchase-money to the vendor upon the completion of the purchase, and the vendor had immediately thereupon repaid the same to the purchaser, by way of loan upon such security as aforesaid.

FOR SALE
WHERE PART
OF PURCHASE-
MONEY
REMAINS ON
MORTGAGE.
immediately
after comple-
tion.

IN WITNESS, &c.

No. XVII.

AGREEMENT *for SALE to a RAILWAY COMPANY; PURCHASE-MONEY to include COMPENSATION for SEVERANCE; COMPANY to MAKE specified ACCOMMODATION WORKS.*

FOR SALE TO
RAILWAY
COMPANY.

MEMORANDUM OF AGREEMENT made the — day of —, BETWEEN A. B. of, &c. (hereinafter called "the vendor"), Parties. of the one part, and C. D. of, &c., and E. F. of, &c., two of the Directors of the — Railway Company, incorporated by the — Railway Act, 18— (hereinafter called "the company"), for and on behalf of the company, of the other part:—

I. THE vendor agrees to sell, and the company agrees to purchase, the pieces or parcels of land specified in the 1st schedule hereto, and the (t) mines and minerals (if any) thereunder, and the inheritance thereof in fee simple, for the sum of £—, such sum to be in full satisfaction and compensation for all damage to be sustained by the vendor by reason of the severing of the said lands from the other lands of the vendor, and for all other damage or injury to be sustained by such other lands by reason

Agreement
to sell and
purchase.

(t) If it is intended that the purchase shall include the mines, they must be expressly mentioned. See Railways Clauses Consolidation Act, 1845, s. 17.

FOR SALE TO RAILWAY COMPANY.	of the formation of the intended railway, and the execution of the works connected therewith, and to be in full satisfaction also for all accommodation works, except as provided in Article II. of this agreement.
Accommodation works.	II. THE company shall, as soon as conveniently can be, make and for ever maintain the several works specified in the 2nd schedule hereto for the accommodation of the adjoining lands of the vendor and the owners and occupiers for the time being of the same.
Completion of purchase.	III. THE purchase shall be completed on the — day of —, at the office of Messrs. —, the vendor's solicitors, and the company shall from that day be entitled to the possession of the said premises, all outgoings up to that time being cleared by the vendor. If from any cause whatever the purchase shall not be completed on that day, the company shall thenceforth pay to the vendor interest on the said purchase-money after the rate of £5 per cent. per annum.
Company, if let into possession, to pay interest.	IV. IF the vendor shall let the company into possession before the said — day of —, the company shall pay interest on the said purchase-money after the rate aforesaid, from the day when they shall be so let into possession.
Delivery of abstract.	V. THE vendor shall, on or before the — day of —, deliver to the company, or their solicitor, an abstract of title to the said premises, commencing at such period as the company shall require.
Vendor to execute assurance to the company.	VI. UPON the payment of the purchase-money at the time and place aforesaid, the vendor shall execute to the company a proper assurance of the said premises, such assurance to contain proper covenants and provisions for the making and maintaining by the company of the accommodation works specified in the 2nd schedule hereto, and a counterpart of such conveyance, duly executed by the company, shall be retained by the vendor. The vendor shall also give to the company an acknowledgment of the right of the said company to production of all such documents as may not be delivered up to them, and an undertaking for their safe custody.
Costs and expenses to be	VII. (u) THE costs and expenses, as well of the vendor as of
Costs thrown on company.	(u) By the Lands Clauses Consolidation Act, 1845, s. 82, all the costs of the conveyance, and of deducing the title, are thrown upon the com-

the company, incurred and to be incurred in or about the preparation and execution of this agreement, and the negotiation preparatory hereto (including the charges of the vendor's surveyor for his valuation of the premises), and in or about the preparation and execution of the conveyance, and the counterpart thereof, and of all other documents relating to the assurance of the said premises, and in or about the preparation of the abstract, and the deducing and verifying of the title of the vendor, and all other costs and expenses (if any) which, in the absence of any special agreement, would be payable by the company under the Lands Clauses Consolidation Act, 1845, shall be borne and paid by the company.

FOR SALE TO
RAILWAY
COMPANY.
borne by the
company.

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

ALL those pieces or parcels of land situate in the parish of — in the county of —, containing by admeasurement —, being parts of several pieces or parcels of land called respectively —, and numbered —, as regards the said parish of —, in the plans and books of reference of the intended railway, deposited with the Clerk of the Peace for the said county, and which pieces or parcels of land, agreed to be sold by the above-written agreement, are delineated and coloured pink in the plan drawn in the margin of the schedule.

THE SECOND SCHEDULE ABOVE REFERRED TO.

(To describe the accommodation works.)

pany, but it is desirable to insert in agreements an express clause as to costs, as it might otherwise be questioned whether the statutory provision was not excluded by implication.

No. XVIII.

FOR SALE TO
RAILWAY
COMPANY.
(Another
Form.)

AGREEMENT *for SALE to a RAILWAY COMPANY; POWER
to COMPANY to take POSSESSION before COMPLETION
upon DEPOSITING PURCHASE-MONEY.*

Partier.

MEMORANDUM OF AGREEMENT made the — day of —, BETWEEN A. B. of, &c. (hereinafter called "the vendor"), of the one part, and C. D. of, &c., and E. F. of, &c., two of the Directors of the — Railway Company, incorporated by the — Railway Act, 18— (hereinafter called "the company"), for and on behalf of the company, of the other part:—

Agreement
to sell and
purchase.

I. THE vendor agrees to sell and the company agrees to purchase the pieces or parcels of land specified and described in the schedule hereto, at the price of £— (x).

Company to
pay additional
sum for sever-
ance.

II. IN addition to the said purchase-money of £—, the company shall pay to the vendor the sum of £—, as and by way of compensation for all damage to be sustained by him by reason of the severing of the said lands from the other lands of the vendor, and for all other damage or injury to be sustained by such other lands by reason of the formation of the intended railway and the execution of the works connected therewith. And the company shall be bound to make and maintain such works for the accommodation of the adjoining lands of the vendor and the owners and occupiers for the time being of the same, as in the absence of any agreement to the contrary they would be bound to make and maintain under the provisions of the Railways Clauses Consolidation Act, 1854 (y).

Accommoda-
tion works.

III. (*For completion of purchase and payment of interest, same as Clause III. of Precedent No. XVII.*)

Company may
take possession
on depositing
purchase-
money.

IV. If the company shall be desirous of taking possession of the lands before the actual completion of the purchase, the company shall be entitled so to do, upon depositing the purchase-money in the bank of Messrs. — at — in the joint names

(x) As mines are not expressly mentioned they will remain the property of the vendor under this agreement. See Railways Clauses Consolidation Act, 1845, s. 77.

(y) See as to accommodation works, the Railways Clauses Consolidation Act, 1845, ss. 68 to 75.

of the vendor and —, and in such case the company shall pay interest upon the purchase-money from the time of taking possession until the completion of the purchase after the rate of £—— per cent. per annum, and the money so deposited shall remain in the bank at the risk of the company, who shall be entitled to any interest allowed by the bank thereon.

FOR SALE TO
RAILWAY
COMPANY.
(Another
Form.)

V., VI. VII. (*As in Precedent No. XVII., supra*, p. 116.)

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. XIX.

AGREEMENT for BUILDING GRANT *in fee in CONSIDERATION of a perpetual RENTCHARGE* (z).

FOR BUILDING
GRANT.

MEMORANDUM OF AGREEMENT made the — day of —, BETWEEN A. B. of, &c. (hereinafter called "the vendor"), of the one part, and C. D. of, &c. (hereinafter called "the purchaser"), of the other part:—

I. WHEN and so soon as the architect or surveyor for the time being of the vendor (hereinafter called "the architect") shall have given his written certificate that the dwelling-houses hereinafter agreed to be built are completed and made fit for habitation to his satisfaction, the vendor shall effectually convey all that plot, &c. (*describing it*), to the uses following (that is to say), to the use that the vendor, his heirs and assigns, or a trustee nominated by him for that purpose, his heirs and assigns, may from the — day of — receive out of the said premises a perpetual yearly rentcharge of £—— per annum, to be issuing out of and charged upon the same, and payable half-yearly on the — day of —, and the — day of —, the

Upon certificate of architect that buildings are complete, vendor to execute conveyance.

To use that vendor may take a perpetual rent,

(z) See observations on grants of this description in a note to Precedent No. C. of Purchase Deeds, *infra*, pp. 353, 354, 355.

**FOR BUILDING
GRANT.**

and subject
thereto to
purchaser in
fee.

Purchaser may
enter and
proceed with
works.

Purchaser to
fence in plot,

and complete
villas.

Division-
fences to be
party-walls.

Purchaser to
make drains.

As to flues.

If purchaser
make default
in building,
&c. vendor
may re-enter
and sell.

Purchaser

first half-yearly payment to be made on the — day of — ; and subject to the said rent-charge and to the statutory powers for enforcing and securing payment thereof to the use of the purchaser in fee simple.

II. THE purchaser may, immediately after the execution of this agreement, enter upon the said plot of ground, and erect the buildings, and otherwise proceed with the works contemplated by this agreement.

III. THE purchaser shall, within one month after obtaining possession of the said plot of ground, fence in the same with good and substantial stone walls on all the sides thereof ; and shall before the — day of —, 18—, at his expense, under the inspection and to the satisfaction of the architect, build, cover in, and completely finish fit for habitation upon such part of the said plot of ground as is marked out for that purpose in the plan hereto annexed, with good freestone and all proper materials of all sorts, and in a good, substantial, and workman-like manner, two semi-detached villas or dwelling-houses, with proper offices and outbuildings, according to a plan and elevation to be prepared by the architect, and under his inspection.

IV. EVERY division or boundary fence separating the said plot of ground from the adjoining plot or plots, shall (when made) be a party-wall, and a proper proportion of the expense thereof shall be paid by the grantees of the adjoining plot, or plots, such proportion to be settled by the architect.

V. THE purchaser shall make all proper drains and sewers in such manner as shall be approved of by the architect.

VI. No flue or substitute for a flue shall be made in the said dwelling-houses, or in any office or building belonging thereto, but such as shall be carried into the chimney-stacks of the said dwelling-houses.

VII. If the purchaser shall at any time leave the works on the said plot of ground for one calendar month, or shall not complete the said dwelling-houses before the said — day of —, 18—, pursuant to Article 3, then it shall be lawful for the vendor or his agent, if he shall think fit so to do, to re-enter upon the said plot of ground and to take possession thereof, and of all buildings and materials whatsoever which may be thereon, and to put an end to the contract.

VIII. WHEN and so soon as the architect shall have given

his written certificate that the dwelling-houses agreed to be built are completed and made fit for habitation to his satisfaction, the purchaser will accept a conveyance of the said plot of ground and the buildings erected thereon upon the terms herein mentioned, and shall duly execute a duplicate or counterpart thereof.

FOR BUILDING GRANT.

to accept conveyance.

IX. THE conveyance shall contain the following covenants by the purchaser (that is to say): to pay the yearly rent; to repair and keep the said dwelling-houses and buildings, and the boundary walls and drains belonging thereto, in good and tenantable repair and condition, and to permit the vendor, his heirs or assigns, and all persons authorized by him or them once in every year in the day time on giving to the tenant or occupier for the time being of the said dwelling-houses respectively one week's notice of his or their intention so to do, to enter the said dwelling-houses, buildings, and premises respectively to examine the condition thereof; and also at all times to insure and keep insured against loss or damage by fire the said dwelling-houses and buildings in the — office, or some other public insurance office, in the sum of £— at least, and on demand to produce to the vendor, his heirs or assigns, the policy or policies of insurance, and the receipt for the premium payable in respect thereof for the current year, and, whenever any loss or damage by fire shall happen to the said dwelling-houses and buildings, or any part thereof, forthwith to expend the money received under such insurance as aforesaid, and also such other moneys as shall be necessary for the purpose, in rebuilding or reinstating the premises; and also not to alter or permit to be altered the external plan or elevation of the said dwelling-houses and buildings respectively without the previous consent of the vendor, his heirs or assigns; and also not at any time without such consent as aforesaid to carry on or permit to be carried on upon the said premises any trade or business whatsoever, or use or permit to be used the same for any other purpose than as private dwelling-houses; nor without such consent to erect on the said plot of land any other messuage or building than the dwelling-houses and buildings so to be erected as aforesaid, except a stable or coach-house or green-houses or conservatories in connection with the said dwelling-houses respectively.

Conveyance to contain covenants by grantee to pay rent and taxes. To repair.

To insure.

Not to carry on any trade or use premises except as private dwelling-houses, without vendor's consent.

Not to erect other buildings without grantor's consent.

**FOR BUILDING
GRANT.**Conveyance to
contain power
of re-entry.Also usual
covenants, &c.Conveyance
by whom, and
at whose cost
to be prepared.Vendor's title
accepted.

X. THE conveyance shall also contain a power of re-entry by the vendor or his heirs, in case the said yearly rent or any part thereof is in arrear for one year, or in case of the breach of any of the purchaser's covenants therein contained.

XI. THE conveyance shall also contain such other covenants, clauses and provisions as are usual in conveyances of the like nature, or shall be otherwise requisite or proper for carrying into effect this agreement.

XII. THE said conveyance, and the counterpart thereof, shall be prepared by Mr. —, and shall be at the cost of the purchaser.

XIII. THE purchaser has examined the vendor's title, and is satisfied therewith, and he hereby accepts the same.

IN WITNESS, &c.

No. XX.

**FOR LOAN OF
MONEY
ON MORTGAGE.****AGREEMENT for the LOAN of a SUM of MONEY on
MORTGAGE (a).**

Parties.

Agreement
to lend.

MEMORANDUM OF AGREEMENT made the — day of —, BETWEEN A. B. of — (*intended mortgagor*) of the one part, and C. D. of — (*intended mortgagee*), of the other part:—

I. THE said C. D. shall lend to the said A. B. the sum of £2,000 upon mortgage of the freehold and copyhold messuages, lands, and hereditaments situate in the parish of —, in the county of —, the short particulars whereof are stated in the schedule hereto, provided that the said A. B. shall before the — day of — next deduce a good marketable title to the said premises [and provided also that the said premises shall

When nego-
tiation for loan
on mortgage
there should
be agreement.

(a) When a negotiation has been entered into for the loan of money on mortgage, and it is contemplated that the investigation of the title will be attended with expense, it is prudent on the part of the intended mortgagee to have an agreement in writing, as, if the title should turn out defective, or for any other reason the mortgage should not eventually be completed, there may in the absence of an agreement be a difficulty in recovering the expense incurred.

be valued by R. H., of, &c., or such other competent land surveyor as shall be appointed for that purpose by the said C. D., at the sum of £3,000 at least, clear of all outgoings] (b). And the said loan shall be made and the said mortgage shall be completed on the — day of — next, and time shall be deemed of the essence of the contract.

FOR LOAN OF
MONEY
ON MORTGAGE.

II. THE principal money to be secured by the said mortgage shall be made payable at the expiration of six calendar months from the date thereof, and shall bear interest from the date thereof after the rate of £— per cent. per annum, payable half-yearly, and the said mortgage shall contain covenants by the mortgagor for payment of the said principal money and interest, and shall also contain such powers and provisions as the mortgagees shall reasonably require for better securing the payment of the principal money and interest.

As to provisions of mortgage deed.

III. ALL costs and expenses of and incidental to this agreement, and the negotiation preparatory hereto, and the mortgage to be made in pursuance hereof (including the investigation of the title, and the valuation of the premises) shall be paid by the said A. B., whether the mortgage shall eventually be completed or not, and whether such non-completion shall arise from [the premises not being of sufficient value, or from] the title proving defective, or from any other cause (not being the wilful default of the said C. D.).

Costs to be borne by mortgagor.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

(b) The words within brackets will be omitted where the intended mortgagee is satisfied as to the value.

No. XXI.

FOR LOAN OF
MONEY
ON MORTGAGE.

AGREEMENT *for the LOAN of a SUM of MONEY on
MORTGAGE, with PROVISIONS for continuing the LOAN
for a TIME CERTAIN, and for the APPOINTMENT of a
RECEIVER.*

Parties.

MEMORANDUM OF AGREEMENT made the — day
of —, BETWEEN A. B. of — (*intended mortgagor*), of the
one part, and C. D. and E. F. of — (*intended mortgagees*), of
the other part:—

Agreement
to lend.

I. THE said C. D. and E. F. agree to lend to the said A. B.
the sum of £7,500 upon mortgage of the freehold and copyhold
messuages, lands, and hereditaments situate in the parish of
—, in the county of —, the short particulars whereof are
stated in the schedule hereto, provided that the said A. B. shall
before the — day of — next deduce a good and marketable
title to the said premises, and provided also that the said pre-
mises shall be valued by R. H. of &c. or such other competent
land surveyor as shall be appointed for that purpose by the said
C. D. and E. F., at the sum of £10,000 at least, clear of all
outgoings. And the said loan shall be made and the said mort-
gage shall be completed on the — day of — next, and time
shall be deemed of the essence of the contract.

As to provi-
sions of mort-
gage deed.

II. THE principal money to be secured by the said mortgage
shall be made payable at the expiration of six calendar months
from the date thereof, and shall bear interest from the date
thereof after the rate of £— per cent. per annum, payable
half-yearly, and to be reduced to £— per cent. per annum in
case the same shall be regularly paid within thirty days after
the respective half-yearly days of payment thereof; and the
said mortgage shall contain covenants by the mortgagor for pay-
ment of the said principal money and interest, and shall also
contain provisions precluding the mortgagees from calling in the
principal money before the expiration of seven years from the
date of the mortgage, in case of such regular payment of interest
as aforesaid, and also precluding the mortgagor from compelling
the mortgagees to receive the same within the like period of

seven years. The said mortgage shall also contain such other powers and provisions as the mortgagees shall reasonably require for better securing the payment of the principal money and interest.

FOR LOAN OF
MONEY
ON MORTGAGE.

III. THE mortgagees may, by a deed to be executed simultaneously with the mortgage, appoint a receiver of the rents and profits of the said premises, with such powers and duties as the mortgagees may think fit, for the purpose of better securing the regular payment of interest, and with such clauses and provisions for removing the receiver, and appointing new receivers from time to time, and otherwise, as are usually inserted in deeds of the like nature, including a proviso that the receiver shall not act until interest shall have become in arrear for one calendar month; and the said A. B. shall (if required) join in such receivership deed.

Mortgagees
may appoint a
receiver.

IV. ALL costs and expenses of and incidental to this agreement, and the negotiation preparatory hereto, and the mortgage to be made in pursuance hereof (including the investigation of the title, and the valuation of the premises), shall be paid by the said A. B., whether the mortgage shall eventually be completed or not, and whether such non-completion shall arise from the premises not being of sufficient value, or from the title proving defective, or from any other cause (not being the wilful default of the said C. D. and E. F., or either of them).

Costs to be
borne by
mortgagor.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. XXII.

AGREEMENT to SUBMIT to ARBITRATION.

THIS INDENTURE made the — day of —, BETWEEN A. B. of, &c. of the one part, and C. D. of, &c. of the other part. (*Recite lease by A. B. to C. D. for twenty-one years—also commencement of action by A. B. for recovery of possession of the premises, on the ground of a breach of covenant.*) AND WHEREAS the parties hereto are desirous to put an end to the said action, and for that purpose have respectively agreed to refer the

TO SUBMIT TO
ARBITRATION.
Parties.

Recite agree-
ment to refer.

**TO SUBMIT TO
ARBITRATION.**

Each party
covenants to
refer certain
questions.

Reference.

subject thereof to arbitration in manner hereinafter mentioned.
NOW THIS INDENTURE WITNESSETH, that it is
HEREBY AGREED AND DECLARED between and by the parties
hereto, as follows :—

I. It shall be, and is hereby, referred to E. F. of, &c., and
L. M. of, &c., or in case of their disagreement to their umpire,
to award and determine :

1. **WHETHER** any of the covenants contained in the said
lease have been broken, and, if so, in what respect.
2. **IF** there has been a breach of covenant, whether the
term granted by the lease has become forfeited, and
the said C. D. ought to quit and deliver up possession
of the said premises to the said A. B., and within
what time, and whether the said C. D. ought to pay
any, and what sum or sums of money to the said A. B.
by way of damages for or in respect of such breach or
breaches of covenant.
3. **IF** there has been a breach of covenant, and the said
C. D. shall nevertheless be permitted to remain in
possession of the premises, then what acts, matters,
and things (if any) ought to be done and performed
by him in order to remedy the breach or breaches of
covenant and make good all damage or injury occa-
sioned thereby.
4. **By** and to whom the costs of the said action and of this
reference ought to be paid, and whether the same
respectively ought to be paid as between attorney and
client, or as between party and party.
5. **ALL** other matters in controversy which may arise out
of the said action, or this reference, or in any wise
incidental thereto.

Referees to
appoint
umpire.

Arbitration,
how to be
conducted.

II. **THE** said E. F. and L. M. shall, within fourteen days
from the date of these presents, appoint an umpire.

III. **THIS** submission to arbitration shall be made a rule of
Her Majesty's High Court of Justice (a), and the arbitration shall

Submission to
arbitration
which is made
by rule of
Court cannot
be revoked.

(a) This will prevent either party from revoking the authority of the
arbitrator. See 3 & 4 Will. 4, c. 42, s. 39. If the submission contains
no agreement for making it a rule of Court, either party can revoke the
appointment at any time before the award, and an agreement to the con-
trary would be nugatory. *Re Rouse and Meier*, L. R. 6 C. P. 212; *Fraser*
v. Ehrensperger, 12 Q. B. D. 310.

be conducted in all respects according to the provisions as to arbitration contained in the Common Law Procedure Act, 1854, and shall have all the incidents and consequences of an arbitration under that Act.

TO SUBMIT TO
ARBITRATION.

IV. THE parties hereto will abide by and observe the said award in all respects.

Parties to
abide by
award.

IN WITNESS, &c.

No. XXIII.

AGREEMENT *by two* TENANTS *in Common for* PARTITION.

FOR PARTITION.

MEMORANDUM OF AGREEMENT made the — day of —, BETWEEN A. B. of &c. (*one tenant in common*), of the one part, and C. D. of &c. (*other tenant in common*), of the other part.

Parties.

WHEREAS the said parties hereto being seised of the hereditaments comprised in the two several schedules hereto as tenants in common in fee simple, have agreed to make partition thereof upon the terms hereinafter expressed. NOW IT IS HEREBY AGREED between the said parties hereto as follows:

Recital of
seisin.

I. THE hereditaments comprised in the 1st schedule hereto shall, as from the — day of — next, be the property in severalty of the said A. B., and the hereditaments comprised in the 2nd schedule hereto shall, as from the same day, be the property in severalty of the said C. D.

Agreement for
partition.

II. INASMUCH as the hereditaments comprised in the 1st schedule hereto are of greater value than the hereditaments comprised in the 2nd schedule hereto, the said A. B. shall pay to the said C. D. such a sum of money, by way of equality of partition, as shall be determined and awarded by E. F. of &c., and G. H. of &c., or in case of their disagreement by their umpire, to whom the same is referred accordingly, with interest for the said sum, after the rate of £4 per cent. per annum, computed from the — day of — next, and the said reference shall be in conformity in all respects to the provisions as to arbitration contained in the Common Law Procedure Act, 1854.

Money to be
paid by one
to the other
for equality
of partition.

FOR PARTITION.

Parties to execute mutual assurances.

As to title deeds.

Costs.

III. WHEN and so soon as the sum to be paid for equality of partition shall be ascertained and paid, with interest thereon as aforesaid, the parties hereto shall respectively execute and do such assurance or assurances and things as shall be necessary for effecting the partition hereby agreed upon.

IV. THE documents of title which relate as well to the hereditaments comprised in the 1st schedule hereto, as also to the hereditaments comprised in the 2nd schedule hereto, shall be retained by the said A. B., and he shall give to the said C. D. an acknowledgment of his right to production and delivery of copies thereof, and an undertaking for their safe custody.

V. ALL the costs and expenses of and incidental to this agreement, and the partition to be made in pursuance hereof, shall be paid by the said A. B. and C. D. in equal shares.

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

THE SECOND SCHEDULE ABOVE REFERRED TO.

No. XXIV.

BUILDING CONTRACT.

BUILDING
CONTRACT.

Parties.

Recite that parties of second part are desirous of having a banking-house erected.

Appointment of architect.

MEMORANDUM OF AGREEMENT made the — day of —, BETWEEN A. B. of &c., and C. D. of &c., builders and co-partners (hereinafter called the "builders") of the first part, and E. F. of &c., G. H. of &c., and I. K. of &c., carrying on the business of bankers, in copartnership under the name or style of E. F. and Company, of the second part. WHEREAS the said parties hereto of the second part being desirous that a banking-house with suitable offices shall be erected on a certain piece of ground belonging to them, situate in — Street, in the city of —, have appointed L. M. of &c., to be the architect for that purpose. AND WHEREAS plans, drawings, and elevations of the

said intended banking-house and offices, and a specification of the works to be done, and of the materials to be provided in and for the erection of the same, have been prepared by the said L. M., and approved of by the parties hereto of the second part. AND WHEREAS the builders are willing to contract for the execution of the said works for the sum of £——. AND WHEREAS the said plans, drawings, elevations, and specification have been signed by the builders and by the said L. M., and are annexed by way of schedule to this agreement, and duplicates of the same respectively are intended to be deposited with the clerk of the works to be employed as hereinafter mentioned, for the use and inspection of the builders, who are to have access thereto at all times for the purpose of carrying on the said works. AND WHEREAS it is intended that the due performance of this contract shall be secured by the joint and several bond of the builders, and of N. O. of &c., and P. Q. of &c., as sureties for the builders :

**BUILDING
CONTRACT.**

That plans, &c. have been prepared.

That builders are willing to contract.

That plans, &c. have been signed by builders and architect.

Agreement that contract shall be secured by bond.

NOW IT IS HEREBY AGREED between the parties hereto as follows :

I. THE builders will well and substantially erect and complete the said banking-house and offices in a good, lasting, and workmanlike manner, according to the instructions and directions and in the manner expressed or contained in the said specification, plans, drawings, and elevations ; and will provide, execute, perform, and fully complete all and singular the materials and works respectively specified, required, and set forth in the said specification, plans, drawings, and elevations, or to be implied therefrom, or to be incidental thereto, or to be hereafter specified or required in such explanatory instructions and drawings (being in conformity with the said original specification, plans, drawings, and elevations), and also in such additional instructions and drawings (not being so in conformity as aforesaid) as shall, from time to time, during the progress of the said works hereby contracted for, be provided by the said L. M. or other the architect for the time being of the parties hereto of the second part ; and will complete all the said works with the materials of the best quality, and in the most substantial and workmanlike manner, and to the satisfaction of the said L. M., or such other architect as aforesaid, without reference to any other person ; and will, in all respects, comply with and

Builders to erect banking-house according to specification, &c.

**BUILDING
CONTRACT.**

To cover in
and complete
by certain
dates, or other-
wise to pay a
fixed penalty.

abide by the true intent and meaning of the said specification, plans, drawings, and elevations, and of this agreement.

II. THE builders will cover in the roof of the said banking-house on or before the — day of —, and will finish and complete the said banking-house and offices on or before the — day of —; and if the said banking-house and offices shall not be completed on or before the said — day of — the builders shall forfeit, out of the moneys which shall be due to them by virtue of this agreement, the sum of £10 for every day which shall elapse after the — day of —, until the said banking-house and offices shall be completed. PROVIDED ALWAYS, that in case the builders shall be prevented by any strike among the workmen from complying with this article, the architect may extend the time for the completion of the works for such reasonable period as he may think fit.

If builders
become bank-
rupt, &c.,
architect may,
after notice,
employ others
to complete
works.

III. If the builders shall become bankrupts, or shall from any cause whatever be prevented from or delayed in proceeding with and completing the said works according to the terms and conditions of this present contract, or shall not proceed in the said works to the satisfaction of the said L. M., or such other architect as aforesaid, it shall be lawful for the said L. M., or such other architect as aforesaid, to leave or cause to be left at the usual place of abode or business of the said builders, or any of them, or of their sureties or either of them, a notice or notices in writing for the said builders to proceed regularly and effectually with the said works; and in case the said builders shall, for seven days after such notice is so left as aforesaid, make default in regularly and effectually proceeding with the said works, it shall be lawful for the said L. M., or such other architect as aforesaid, to employ any other workmen, either by contract or measure and value or otherwise, to proceed with the said works and complete the same, and pay to the said workmen out of the moneys which shall be then due to the said builders on account of this contract, the amount of their charges for the same and for all necessary materials to be found and provided for such completion; and the moneys which previously to such default shall have been paid to the said builders on account or in respect of any work or materials then already done, executed, or provided by them, shall be considered as the full payment and satisfaction, not only for the said work and materials in

**BUILDING
CONTRACT.**

respect of which such payments shall have been made, but also for any other work and materials which the said builders shall then have done, executed, or provided, although no such payment shall have been previously made in respect thereof; and all the balance and moneys whatsoever which then or afterwards would have become payable or due to the said builders under this present contract, if this present clause had not been inserted, together with all the materials then delivered for the purpose of the works hereby contracted for and then being upon or about the site of the said banking-house and offices, shall, upon such default as aforesaid, become the absolute property of the said parties hereto of the second part; and if the said balance, moneys, and materials so forfeited and to become the property of the parties hereto of the second part as aforesaid be insufficient to cover such charges for workmen and materials as are last hereinbefore directed to be paid thereout, then and in such case the said builders shall and will make good and pay such deficiency upon demand.

IV. If the said L. M., or such other architect as aforesaid, shall at any time or times consider any of the workmen employed by the said builders on the works as in anywise incompetent, or as acting improperly, it shall in every such case be lawful for the said L. M., or such other architect as aforesaid, to discharge such workman or workmen, and the said builders shall without delay put another workman or other workmen in his or their place.

Architect may remove workmen for incompetency or other causes.

V. THE said L. M., or such other architect as aforesaid, may appoint a suitable person to be clerk of the works, to superintend the works hereby contracted for, and to be constantly on the premises during their progress; and the clerk shall be paid by the parties hereto of the second part.

Architect to appoint a clerk of the works.

VI. In case any of the materials to be brought on the said premises by the said builders shall be considered by the said L. M., or such other architect as aforesaid, or the said clerk of the works, unsound or in any respect improper, the said builders will, upon notice in writing to them or their foreman on the premises, given by the said L. M., or such other architect as aforesaid, or by the said clerk of the works, cause the same to be removed from off the ground, and proceed with the said works with materials corresponding with the said specification

Architect or clerk of the works may remove unsound materials.

BUILDING
CONTRACT.

and instructions, and approved of by the said L. M., or such other architect as aforesaid; and in default of such removal within three days after such last-mentioned notice, it shall be lawful for the said L. M., or such other architect as aforesaid, to cause the same to be removed to such place or places as he may think proper, without being in anywise answerable or accountable for any loss or damage that shall happen to any materials so removed as aforesaid, and to cause proper materials to be substituted for the same, and to pay all expenses attending such removal and substitution out of the moneys which shall become due to the said builders by virtue of this contract.

Builders to
take down
unsound work
and rebuild.

VII. IN case the said L. M., or such other architect as aforesaid, shall consider any part of the said works to be executed in an unsound and improper manner, the said builders will cause the same immediately to be taken down and executed in a proper manner, and to the satisfaction of the said L. M., or such other architect as aforesaid, without any extra charge or expense whatever.

Power to
architect, or
parties of the
second part,
to direct addi-
tions or altera-
tions.

VIII. If the said L. M., or such other architect as aforesaid, or the parties hereto of the second part, shall think proper at any time or times to make any alterations or additions to or omissions in the works hereby contracted for, he or they shall give to the said builders written instructions for such alterations, additions, or omissions, signed by the said L. M., or such other architect as aforesaid; but the said builders shall not be considered to have authority for any alteration, addition, or omission, or to make any claim for the value or otherwise in respect thereof, without such written instructions so signed as aforesaid; and should any alteration or addition be charged for or brought into any day account, the said day account shall be delivered at the office of the said L. M., or such other architect as aforesaid, on the Tuesday morning next ensuing after such day work may have been done, signed by the clerk of the works, and no account unless so signed and delivered shall be admitted by the said L. M., or such other architect as aforesaid.

Value of
alterations, &c.
to be ascer-
tained and
added to ori-
ginal contract
money.

IX. ANY such alteration, addition, or omission shall not vacate this present contract, but shall be ascertained by an admeasurement or valuation, to be made by the said L. M., or such other architect as aforesaid, and the value thereof so ascertained shall be added to or deducted from the said sum of

£——, as the case may be, and the addition in value (if any) shall be paid for in the same manner and at the same time as hereinafter is expressed for the payment of the ultimate balance of the said sum of £——.

BUILDING
CONTRACT.

X. ANY deviation made in the said works from the said original plans, drawings, elevations, and specification (except such deviations as shall be so ordered as last aforesaid) shall be altered and corrected at the costs and expenses of the said builders.

Any unauthorized deviations to be corrected at expense of builders.

XI. ANY damage arising from accidents or carelessness of workmen or otherwise to the said works hereby contracted for, or to the materials or implements therein used, shall be borne and effectually made good by the said builders at their own costs and charges.

Builders to repair damage.

XII. THE said builders shall at their own costs and charges insure, in some or one of the offices for insurance against fire in London or Westminster, to be approved of by the said parties hereto of the second part, and in the joint names of the said builders and of some person appointed in that behalf by the parties hereto of the second part, the said buildings from loss or damage by fire in the sum of £——, and shall continue such insurance until the said L. M., or such other architect as aforesaid, shall certify the said banking-house and offices to be completed.

Builders to insure.

XIII. THE said builders shall pay all the fees of the district surveyor, or other fees or official demands arising from the execution of the said works, and will generally do, execute, and provide not only all the works and materials described and specified in the said plans, drawings, elevations, and specification respectively, but likewise all such works and materials as are necessarily implied or may be reasonably inferred in or from the said plans, drawings, elevations, and specification respectively, for the erection and completion of the said buildings, with the offices and appurtenances, although the same may not happen to be therein expressly mentioned as to be done by the said builders, the true intent and meaning of these presents being that the works and materials hereby contracted to be done, executed, and provided, shall include all that is requisite for the building and completing the said building and offices according to the said plans, drawings, elevations, and specification.

Builders to pay fees of district surveyor, and generally to execute all works described in specification, &c. or to be implied therefrom.

**BUILDING
CONTRACT.**

Builders not
to make sub-
contract with-
out consent.

The contract-
money to be
paid by instal-
ments.

Balance to be
paid on certifi-
cate of archi-
tect of comple-
tion of works.

Decision of
architect to be
final.

XIV. THE said builders will not, unless with the consent of the said L. M., or such other architect as aforesaid, make any sub-contract for the execution of the works hereby contracted for, or any part thereof, nor, unless with such consent as aforesaid, assign or underlet this present contract.

XV. THE said sum of £—— shall be paid to the said builders in manner following (that is to say), £—— part thereof shall be paid by twelve instalments of £—— each, upon the certificate from time to time of the said L. M., or such other architect as aforesaid, that work and materials to a sufficient amount shall have been done, executed, or provided by the said builders to the satisfaction of the said L. M., or such other architect as aforesaid, and £——, the balance of the said sum of £——, shall be paid within three calendar months after the whole of the said works shall be completed and finished, and the accounts made up.

XVI. THE said builders shall not be entitled to demand or receive the said balance of £—— until the said L. M., or such other architect as aforesaid, shall certify under his hand that the whole of the said works have been completed and finished to his satisfaction.

XVII. THE decision of the said L. M., or such other architect as aforesaid, with respect to the amount, state and condition of the works actually executed, and also in respect to any and every question that may arise concerning the construction of the present contract, or the said plans, drawings, elevations, and specification, or the execution of the works hereby contracted for, or in anywise relating thereto, shall be final and without appeal.

IN WITNESS, &c.

No. XXV.

AGREEMENT to procure LETTERS PATENT, and to SELL a AS TO LETTERS
PATENT.
MOIETY of the INVENTION and the BENEFIT thereof (a).

MEMORANDUM OF AGREEMENT made the — day of —, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part. WHEREAS the vendor hath recently discovered certain improvements in —, and intends forthwith to apply for Her Majesty's Letters Patent for special licence and privilege to make, use, exercise, and vend the invention for his use, for the term of — years.

I. THE said A. B. (hereinafter called the vendor) shall sell, and the said C. D. (hereinafter called the purchaser) shall purchase, one moiety or equal half part or share of and in the said invention, and all improvements whatsoever which the vendor shall hereafter make or discover therein, and of and in all letters patent which the vendor shall obtain in respect of such invention and improvements, and all advantages incident to or to be derived from the same, for all the term for which such letters patent shall be granted, and for such renewed and additional term or terms as shall hereafter be granted therein, at the price of £—. Parties.
Recite discovery of invention.
Agreement to sell and purchase one moiety of the invention.

II. THE vendor shall, within — days next after the date of this agreement, apply for the said letters patent, and shall follow up such application by all proceedings and means necessary and usual in such cases, so that the letters patent may be obtained and registered as soon as possible, and the vendor shall pay all fees and expenses attendant on obtaining the said letters patent. Vendor to obtain letters patent.

III. WITHIN — days after such letters patent shall be granted, the purchaser shall pay to the vendor the said purchase-money, and the vendor shall execute to the purchaser an assignment of the said moiety, such assignment to be prepared by and at the expense of the purchaser, and to be left by him at the office of Mr. —, for execution by the vendor; and the As to completion of purchase.

(a) See 46 & 47 Vict. c. 57.

AS TO LETTERS
PATENT.

said assignment shall contain (amongst other things) a covenant on the part of the vendor not to do, or assent to, or cause to be done or assented to, any act, deed, matter, or thing, whereby the said letters patent shall be forfeited or invalidated, or the right of the purchaser to his share thereof be affected, and a provision that the business of the said letters patent shall be managed and conducted by the vendor, and that he shall keep regular accounts of the same, and that such accounts shall be at all times open to the inspection and examination of the purchaser, who shall have full power to take copies of or extracts from the same.

Agreement to
be voidable in
a certain case.

IV. If the said letters patent shall not be obtained before the — day of — next, this agreement shall be voidable by the purchaser.

IN WITNESS, &c.

ABSTRACTS, SEARCHES for INCUMBRANCES AND PURCHASE DEEDS.

WHEN a binding contract for the sale of lands has been entered into, whether upon a public auction, or a private sale, the next step in the transaction is for the vendor to furnish to the purchaser an abstract of title, and to verify such abstract. If the purchaser is satisfied with the title as disclosed by the abstract, he makes the usual searches for incumbrances in the proper office or offices, and if the result of this search is also satisfactory, the sale is carried into effect by a deed of conveyance, and by payment of the purchase-money. It is deemed convenient to introduce in this place three Dissertations:—I. On Abstracts and their verification. II. On searches for Incumbrances; and III. On Purchase Deeds. Preface.

I.—ABSTRACTS AND THEIR VERIFICATION.

UNLESS the conditions or agreement for sale stipulate to the contrary, on the sale of freeholds or copyholds the title must be deduced for a period of forty years, that period having been substituted for sixty years by the Vendor and Purchaser Act, 1874. And in cases where an earlier title than sixty years might have been required under the former practice, an earlier title than forty years may now be required (c). Commence-
ment of title.

(c) Vendor and Purchaser Act, s. 1.

A purchase-deed, or marriage settlement, is a good instrument with which to commence the abstract. If the title commences with a general devise contained in the will of a person who died forty years since, then, in the absence of any stipulation to the contrary, proof by old leases, declarations, receipts of rent, parish books, &c., should be supplied that he was in possession of the estate, or in the receipt of the rents and profits thereof, at the time of his decease. If the abstract commences with an appointment, the purchaser was until the recent Act entitled to have the instrument creating the power abstracted, but it is now provided by the Conveyancing Act, 1881, that in such case the deed creating the power need not be abstracted (*d*). It is apprehended that, notwithstanding the recent Act, an admission to copyholds is not a proper commencement of title without the surrender on which the admission is grounded. In a word, it is necessary that, subject to the statutory conditions, the title should be properly commenced, and satisfactorily deduced as to the legal as well as the equitable estate, the abstract showing that the vendor is entitled to the lands and the inheritance thereof in fee simple in possession, free from all incumbrances, except such as can be satisfied.

As to right of purchaser to inspect ancient deeds.

It is clear that under the recent Act a purchaser is not entitled before completion to the production and inspection of deeds, whether in the vendor's possession or not, of earlier date than the deed forming the stipulated root of title, though he will be entitled to have them handed over to him on completion, if they relate to no other property.

Inquiry as to existing leases.

If the property is subject to any existing leases, the vendor should allow the purchaser to inspect the counterparts, so that it may be seen that they contain no unusual provision in favour of the lessee—as, for instance, a right of pre-emption—and that the lessor has entered into no covenant which could prove a burthen on the estate in the hands of the purchaser.

(*d*) Sect. 3, sub-sect. 3.

From the document which commences the title every deed, instrument, incumbrance, and fact, relating to, or affecting the title, should be stated in the abstract, except leases which have expired by effluxion of time. Thus, a mortgage deed must be abstracted although the money may have been repaid, and the property has been reconveyed.

What abstract should state.

Where there has been a mere equitable mortgage, which has been discharged, or is intended to be discharged, before completion, it is usual not to mention it in the abstract, and Mr. Dart approves of and defends the practice (*e*), notwithstanding the opinion to the contrary of Vice-Chancellor Wood (*f*).

Equitable mortgages.

Deeds which do not affect and never have affected the right to sell or dispose of the property, although they may confer some beneficial interest in it, need not, it is conceived, be abstracted. Thus where a mortgage is made to persons by one deed, and by another it is declared that the mortgagees are trustees for others, the latter need not be abstracted.

Deeds not affecting right to sell need not be abstracted.

If land has been conveyed to a trustee upon an absolute trust for sale, and the trusts of the sale moneys are declared by a separate deed, there will be no occasion to abstract the deed declaring the trusts of the moneys, for although the 63rd section of the Settled Land Act, 1882, makes the person or persons for the time being beneficially entitled for life, or for other limited period, to the income of the sale moneys and of the land until sale, tenant for life for the purposes of the Act, the 6th section of the Settled Land Act, 1884, provides that in the case of a settlement within the meaning of the 63rd section of the Act of 1882, any consent not required by the terms of the settlement shall not by force of anything contained in the Act of 1882 be deemed necessary to enable the trustees of the settlement, or any other person, to execute any of the trusts or powers created by the settlement (*g*).

Trustee for sale need not abstract deed containing trusts of sale moneys.

(*e*) Dart, p. 343, 6th edition.
 (*f*) Drummond v. Tracey, Johns.
 608.
 (*g*) See Taylor v. Poncia, 25 Ch.

D. 646, as to the proper construction of the 63rd section of the Act of 1882.

Judgments,
&c.

Any judgments, crown debts, executions, extents, or *lis pendens* which affect the property, should be mentioned in the abstract.

What purchaser should
do.

The purchaser, or his solicitor, is entitled and should never neglect to examine the abstract with the deeds, wills, and other instruments relating to the title, or with attested or official copies of them, nor should he omit to make the proper searches for incumbrances.

As to settlements made
in pursuance
of articles.

Articles before marriage, in pursuance of which settlements have been made, should be abstracted, as well as the settlements themselves, to show that the articles were duly carried into effect.

Births, &c.
proved by
certificates.

When it is necessary to show the birth, death (*h*), or marriage of any person, the fact must be proved either by a recital or statement contained in some deed, instrument, act of parliament, or statutory declaration, dated twenty years before the date of the contract (*i*), or by a certificate obtained from the proper registers (*k*). Certified extracts from non-parochial registers, which, under the 3 & 4 Vict. c. 92, are deposited with the Registrar-General, are now made evidence by that Act (*l*).

On claim by
descent.

When the title, or any portion of it, depends on a claim by descent, the facts supporting the pedigree must be proved, either by recitals or statements in deeds, &c., twenty years old (*m*), or by the strict legal evidence of such facts, if it can be procured. If not, extracts from parish books, family Bibles, old books or papers, inscriptions on tombstones, or the declarations of old persons, will often be admissible as proof.

Presumption
of death.

(*h*) If a person has not been heard of for seven years, his death will be presumed; but it is a matter of evidence, not of presumption, at what time within that period he died, and the onus of proving it lies on the person who claims a right, to the establishment of which that fact is essential. *In re Phenés' Trusts*, L. R. 5 C. A. 139; *In re Lewes' Trusts*, L. R. 6 C. A. 356; *In re Beasney's Trust*, L. R. 7 Eq.

498; *Doe v. Nepean*, 5 B. & Ad. 86; *Hickman v. Upsall*, 4 Ch. D. 144; *In re Corbishley's Trusts*, 14 Ch. D. 846.

(*i*) Vendor and Purchaser Act, 1874, sec. 2, rule 2.

(*k*) See 6 & 7 Wm. 4, c. 86; 1 Vict. c. 22; 16 & 17 Vict. c. 134.

(*l*) Sec. 9.

(*m*) Vendor and Purchaser Act, 1874, sec. 2, rule 2.

When prior estates are alleged not to have vested for default or failure of issue, the same proof of want of issue must be shown as is required to verify a pedigree. Proof of failure of issue.

In the case of wills, the abstract is verified by production of the probate, or an office copy, which is now sufficient evidence as to real as well as personal estate (n). Proof of wills.

A fine is proved by the chirograph, or an exemplification under the seal of the Court, or by a copy examined with the roll, and passed by the examiner (o). Evidence of fine.

The best evidence of a recovery is an exemplification, or a copy examined with the roll. Recovery.

It must be seen that every document has been properly executed and attested, and that the proper stamps have been affixed. Where enrolment, registration, or acknowledgment is necessary, it must be ascertained that the documents have been properly enrolled, registered, or acknowledged, according to the provisions of the statutes making these formalities necessary. Execution of deeds, &c.

When the consideration is money, it must be seen that a receipt is endorsed on the deed if dated before the 1st of January, 1882, but as to a deed dated on or after that day it is sufficient if the receipt is contained in the body of the deed or endorsed on it (p). Receipt for consideration.

The recital of a lease for a year executed before the 4 & 5 Vict. c. 21, is by that Act made conclusive evidence of its due execution.

It should be seen that there is no outstanding interest such as dower, free-bench, curtesy, or any other unsatisfied charge. Although more than twelve years may have elapsed since legacies and sums charged on the land became payable, receipts or a release must be obtained from the person entitled to these charges, as the claims on their account may still be subsisting by Outstanding interests.

(n) See the Probate Act, 20 & 6th edition.
21 Vict. c. 77, sec. 64.

(o) Burt. Comp. 487; Dart, 356,

(p) See Conveyancing Act, 1881,
secs. 54, 55.

infancy, or other disability, or by some intermediate acknowledgment (*q*).

As to due
execution of
powers.

When powers have been executed it must be ascertained that they have been exercised with the needful formalities. If, for instance, the power is to be executed by a deed, "signed, sealed, and delivered in the presence of and attested by two credible witnesses," it should be seen that the attestation clause expresses all this to have been done (*r*).

22 & 23 Vict.
c. 35, s. 12.

The 12th section of the 22 & 23 Vict. c. 35, provides that a deed thereafter executed in the presence of and attested by two or more witnesses in the manner in which deeds are ordinarily executed and attested, shall, so far as respects the execution and attestation thereof, be a valid execution of a power by deed or instrument. not testamentary, notwithstanding that such deed or instrument may require some additional or other forms of execution or attestation, but not so as to defeat any direction in the instrument creating the power that the consent of any person shall be necessary to a valid execution. As the ordinary form of attestation of deeds is "signed, sealed, and delivered," &c., it would seem that where the power requires all these formalities, it might be made a ground of objection that either of them is omitted from the attestation clause.

Execution
and attesta-
tion of testa-
mentary
appointments.

With regard to wills, however, it is provided by the Wills Act that a will executed as required by the Act shall, as far as respects the execution and attestation thereof, be a valid execution of a power notwithstanding that some additional or other form or solemnity should be required by the instrument creating the power (*s*).

Inquiry as to
settlements.

It may sometimes also be desirable to inquire, whether any settlement affecting the estate has been

(*q*) *Shields v. Rice*, 3 Jur. 950; *Cooke v. Soltan*, 2 Sim. & Stu. 154; 3 & 4 Wm. 4, c. 27, sec. 40.

(*r*) See *Wright v. Wakeford*, 17 Ves. 454. Notwithstanding the observations on this case in *Vincent v. Bishop of Sodor and Man*, 4 De

G. & Sm. 294; and *Re Rickett's Trusts*, 1 J. & H. 70, it must still be regarded as an authority for the precise point decided by it. See also *Burdett v. Spilabury*, 10 Cl. & Fin. 340.

(*s*) Sec. 10.

executed which has not been noticed in the abstract; but in all these cases the expediency of making such inquiries must depend upon the particular condition of the title, and the circumstances or suspicions which it suggests.

If any portion of the title depends on proceedings in bankruptcy, the abstract must be verified by the production of certified copies of such proceedings. Proceedings in insolvency and bankruptcy.

When the description of the parcels has been altered, or they are not sufficiently described in the deeds, proof of identity by leases, parish assessments, receipts for rent, declarations, or other evidence, should be supplied. Identity.

As to deeds which require to be enrolled, they are proved by production of examined copies of the originals; but if the originals are in the custody of the vendor, the purchaser would be entitled to their production. Proof of enrolled deeds.

If the property is sold discharged from land-tax, the redemption of the land-tax is shown by the certificate of the Commissioners, with the receipt of the cashier of the Bank of England, and memorandum of registration (t). Land-tax.

When a person seised or entitled is stated to have died intestate, letters of administration are the best evidence of intestacy, and should be produced. If the deceased owner had made a will, but died intestate as to the particular property, the will should be mentioned in the abstract, with a statement that it contains no devise or bequest of the land in question. Proof of intestacy.

When the title-deeds are lost or destroyed, the vendor must prove the fact of the loss or destruction, and must also furnish the purchaser with the means of showing what were the contents of the destroyed Evidence when title-deeds are destroyed.

(t) 42 Geo. 3, c. 116, sec. 38; *Buchanan v. Poppleton*, 4 Jur. N. S. 414. Land-tax redeemed under 38 Geo. 3, c. 60, or under 42 Geo. 3, c. 116, is personal estate, but a fee-farm rent in lieu of land-tax purchased under the last-mentioned Act is real estate. The 16 & 17

Vict. c. 117. sec. 2, provided for the merger of all land-tax redeemed under any contract entered into after the 20th August, 1853, but this section was repealed by sec. 3 of the 19 & 20 Vict. c. 80, as to contracts entered into after the 29th July, 1856.

deeds, and of proving that such deeds were duly executed (*u*).

Execution
of deed by
attorney.

If the deed was executed by attorney, the power or letter should be produced, and (except in cases coming within the enactment referred to in the next paragraph) proof should be given that the principal was living at the time when the attorney executed; and if the power was not supported by a valuable consideration, the purchaser must be supplied with proof that the principal had not revoked the power prior to the deed, which was executed in pursuance of it. Lord St. Leonards suggests, that where purchase-money is paid to such an attorney, he should execute a declaration of trust of the purchase-money for the purchaser, until he is furnished with conclusive evidence that the vendor was alive at the execution of the conveyance.

As to powers
of attorney
executed after
31st December,
1882.

If, however, the power of attorney is created by an instrument executed after the 31st December, 1882, and is given for a valuable consideration, and in the instrument creating the power it is expressed to be irrevocable, it is provided by the Conveyancing Act, 1882, sec. 8, that such a power in favour of a purchaser (*v*) shall not be revoked at any time, either by anything done by the donor of the power, or by his death, marriage, lunacy, unsoundness of mind, or bankruptcy; and, by section 9, it is provided that if a power of attorney created as aforesaid, whether given for a valuable consideration or not, is in the instrument creating the power expressed to be irrevocable for a fixed time not exceeding one year from the date of the instrument, then, in favour of a purchaser, the power shall not be revoked for that fixed period. It follows that whenever a deed is abstracted which was executed by an attorney under any such power, the production of the power is sufficient, as it will be immaterial whether the donor is living or not.

Title to
leaseholds.

When the property is leasehold, the original lease and all the subsequent assignments should generally

(*u*) *Bryant v. Busk*, 4 Rus. 1. clause includes a mortgagee or
(*v*) Who by the interpretation lessee.

be abstracted; but if the property is held under a very ancient lease, it is sufficient to commence the abstract with the original lease (*x*), and then to take up the title at a period of forty years from the time of the purchase. It has been seen that, in the absence of stipulation, the purchaser is precluded by the new statutory rules from calling for the lessor's title (*y*).

When the estate has been specifically bequeathed, and the sale is made by the specific legatee, proof must be given of the assent of the executor to the bequest.

On the sale of renewable leaseholds, where the lease is expressed to have been granted in consideration of the surrender of a prior lease, the vendor must show the title to the surrendered lease (*z*), in the absence of any stipulation to the contrary.

As to renewable leaseholds.

As to *satisfied* terms, the document creating the term should be abstracted, together with the mesne assignments. If they have become merged under the provisions of the 8 & 9 Vict. c. 112, for rendering the assignment of satisfied terms unnecessary, the title to the term must be traced down to the period of such merger. If the term is of ancient date, it is sufficient to abstract the deed creating the term, and then to take up and trace the title to the term at the point at which the title to the inheritance is commenced. A valid objection to the title could not be raised, on account of the deed creating the term being lost, if it were of ancient date.

As to satisfied terms.

As to copyholds, the abstract should contain a copy of the entries on the Court Rolls relating to the estate, accompanied by the necessary instruments, facts, and proofs, to show the equitable title; and the title is proved and verified by the production of copies of the Court Rolls. Where an owner dies seised, proof must be given that he did not leave a wife entitled to freebench.

Copyholds.

(*x*) *Frend v. Buckley*, L. R. 5 Q. B. 243.

(*z*) *Hodgkinson v. Cooper*, 9 Beav. 304.

(*y*) *Supra*, p. 8.

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When a conditional surrender has been made to a mortgagee, and he has not been admitted, it should be shown that satisfaction has been entered up.

On the purchase of copyholds, inquiry should be made as to the customs of the manor, especially as to descent, free-bench, fines, heriots, rents, &c.; and the purchaser should search the Court Rolls of the manor.

As to Crown
lands and
rectories
impropriate.

In an abstract of title to lands granted by the Crown, or a rectory impropriate, the original grant must precede the deduction of the modern title, so as to show that it was a grant in fee, that no rent was reserved, and that there is no remainder or reversion in the Crown. The title from the original grantee to the commencement of the modern title need not be produced.

As to advow-
sons.

The title to advowsons must be traced for three entire incumbencies if the times of such incumbencies shall together amount to the full period of sixty years; but if the times of such incumbencies do not together amount to sixty years, then for such further time as with the times of such incumbencies will make up the full period of sixty years; and the purchaser must be furnished with a list of the presentations which have taken place within the required period. But no advowson can be recovered after the expiration of one hundred years, from the time at which a clerk has obtained possession of the benefice adversely, so that the title need never be carried back beyond one hundred years, although there may not have been three entire incumbencies within that time (a).

The new rules laid down in the second section of the Vendor and Purchaser Act, 1874, apply only to contracts for the sale of land. It would appear, therefore, that contracts for the sale of advowsons, which can hardly be brought within the term "land," are not governed by these rules.

As to life or
reversionary
interests.

On the sale of life or reversionary interests in trust moneys, the document containing the trust must be

(a) 3 & 4 Wm. 4, c. 27, secs. 30, 32.

abstracted, and all the clauses therein which relate to, or can in any respect affect, the property must be fully set out. If there are any other deeds which relate to the fund, they also must be abstracted, including any deeds by which new trustees have been appointed; and the purchaser will be entitled at his own expense to attested copies and a covenant for, or, under the new Act, an acknowledgment of his right to the production of such deeds and documents, in the absence of express stipulation to the contrary. The purchaser must ascertain the actual condition and position of the fund at the time of sale, and carefully examine the provisions of the document containing the trust, in order to be satisfied that there is no provision or power under which the *corpus* of the fund may be diminished or otherwise affected.

When the title is derived under a private Act of Parliament, a Queen's Printer's copy of the Act should be provided (*b*); but if the vendor has no such copy in his possession the purchaser must pay for it (*c*). Evidence of Act.

In purchasing an allotment, it should be ascertained that the allotment was authorized by the Act. As to allotment.

As to enclosures or encroachments made by a tenant, they will generally, as between him and his landlord, be the property of the latter, unless it can be proved that the tenant at the time intended the encroachment for his own benefit, and not to hold it as he held the estate of which he was tenant (*d*). As to encroachments.

As to open strips of land, which are next a public road, the legal presumption is that they belong to the owner of the adjoining enclosed land, and not to the lord of the manor (*e*). Strips of land by a public road.

On the purchase of life policies, the purchaser, in the absence of a stipulation to the contrary, should be supplied with proof of the correctness of the state- As to life policies.

(*b*) See 8 & 9 Vict. c. 113, sec. 3. 2 El. & Bl. 349; Doe *d.* Croft v. Tidbury, 14 C. B. 304, 325.
 (*c*) Conveyancing Act, 1881, s. 3, sub-sec. 6. (*e*) Doe v. Pearsey, 7 B. & C. 304; Dendy v. Simpson, 18 C. B. M. & W. 590; Andrews v. Hailes, 831.

ments on which the policy was granted, and that the last premium has been paid; and if the policy was effected on the life of any other person than that of the assurer it will be necessary to ascertain that the assurer had at the time a pecuniary interest in the life of the assured.

Custody of abstract.

The purchaser is entitled to the custody of the abstract until either the purchase is finally rescinded by consent, or declared impracticable by the Court (e); and if the sale proceeds, the abstract is the property of the vendee.

Succession duty.

Where land has devolved upon any person by the death of another since the 19th May, 1853, the purchaser should call for a receipt or certificate of the payment of the succession duty (f). And if the sale is made by a tenant for life and remainderman, the purchaser, unless precluded by an express stipulation, should require the succession duty, which will become payable on the death of the tenant for life, to be commuted, under section 41 of the Act, unless he is willing to accept an indemnity against such duty, or an abatement from his purchase-money in respect thereof.

Penalty for concealing deeds.

By a recent Act (g) it is enacted that any seller or mortgagor of land, or of any chattels real or personal, or chases in action, conveyed or assigned to a purchaser, or the solicitor or agent of any such seller or mortgagor, who shall after the passing of this Act conceal any settlement, deed, will, or other instrument material to the title, or any incumbrance, from the purchaser, or falsify any pedigree upon which the title does or may depend, in order to induce him to accept the title offered or produced to him, with intent in any of such cases to defraud, shall be guilty of a misdemeanor, and being found guilty shall be liable to the penalties mentioned in the Act. This Act is extended by the 23 & 24 Vict. c. 38, s. 8, to mortgagees as well as purchasers.

(e) *Roberts v. Wyatt*, 2 Taunt. 268.

(f) 16 & 17 Vict. c. 51, secs. 51, 52.

(g) 22 & 23 Vict. c. 35, sec. 24.

Neither a vendor nor his solicitor can be required to answer an inquiry by the purchaser, whether the vendor or his solicitor is aware of any settlement, deed, fact, omission, or incumbrance affecting the property not disclosed by the abstract (*h*). What inquiries vendor may refuse to answer.

II.—SEARCHES FOR INCUMBRANCES.

It has been already stated that the abstract to be furnished by the vendor should mention all the documents and incumbrances affecting the property sold. But in some instances the legislature has provided for the enrolment and registration of documents and incumbrances, for the better protection of purchasers and mortgagees. Provision in certain cases for registration.

Middlesex and Yorkshire Registries.

By the 7 Anne, c. 20, it is enacted that a memorial of all deeds and conveyances and of all wills and devises in writing, of or concerning or whereby any houses, manors, lands, tenements, or hereditaments in the county of Middlesex may be in any way affected in law or equity, may be registered as therein directed, and that every such deed and conveyance shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee for valuable consideration unless such memorial thereof shall be registered as by the Act is directed before the registering of the memorial of the deed or conveyance under which such subsequent purchaser or mortgagee shall claim, and that every such devise by will shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee unless a memorial of such will be registered in such manner as is therein directed. The 8th section then provides that all memorials of wills that shall be registered within six months after the death of devisors dying in Great Britain, or within three Middlesex Registry Act.

(*h*) *In re Ford and Hill*, 10 Ch. D. 365.

Yorkshire
Registry Acts.

years after the death of devisors dying on the sea or beyond the seas, shall be valid against subsequent purchasers. The Acts 2 & 3 Anne, c. 4; 6 Anne, c. 35, and 8 Geo. II. c. 6, contain similar provisions as to the registration of assurances, &c. of land in Yorkshire. These Yorkshire Acts have been repealed as from the 1st January, 1885, but their provisions remain applicable to assurances made, and wills of persons dying, before that date (*i*).

To what pro-
perty Registry
Acts do not
extend.

The above Acts do not extend to copyholds, leases at a rack rent, or to any lease, not exceeding twenty-one years, where the actual possession and occupation go along with the lease, or to the City of London, or to any of the chambers in Serjeants' Inn, or to the Inns of Court or Chancery.

Appointment
must be regis-
tered.

The following points have been decided under the above Acts, viz. (1) That a deed of appointment under a power must be registered (*k*). (2) That the memorial of an assignment of leaseholds will not, by containing a recital of the lease, cure the omission to register the lease (*l*).

Assignment
of legacy
charged on
land need not
be registered.

(3) That an assignment of a legacy charged on land (*m*), or of the proceeds of land devised on trust for sale (*n*), is an assignment of money only, so that such an assignment need not be registered.

Equitable
mortgage.

(4) That an equitable mortgage by agreement in writing, either with or without a deposit of deeds, requires registration (*o*), and so does a further charge in favour of a mortgagee who has registered his first mortgage (*p*).

Further
charge.

(5) That an enfranchisement of copyholds must be registered (*pp*). (6) That registration is not requisite as to any interest in land not created by writing, *e.g.*, an equitable mortgage by deposit only or a vendor's lien for unpaid purchase-money, where

Enfranchise-
ment of copy-
holds must
be registered.Equitable
mortgage by
deposit only
and lien for

(*i*) 47 & 48 Vict. c. 54, secs. 4, 51.

(*k*) *Scrafton v. Quincey*, 2 Ves. sen. 413.

(*l*) *Honycomb v. Waldron*, 2 Str. 1064.

(*m*) *Malcolm v. Charlesworth*, 1 Keen, 63.

(*n*) *Arden v. Arden*, 29 Ch. D. 702.

(*o*) *Moore v. Culverhouse*, 27 Beav. 639.

(*p*) *Credland v. Potter*, L. R. 10 Ch. 8; *Neve v. Pennell*, 2 H. & M. 170; *Wight's Mortgage Trust*, L. R. 16 Eq. 41.

(*pp*) *Regina v. Lord Truro*, 21 Q. B. D. 555.

there is no memorandum (q). (7) That a purchaser who buys with actual notice of an unregistered deed, is bound by it (r). (8) That the registration of a deed is not of itself notice. If, however, a man searches the register he will be deemed to have notice, unless he only searched for a particular period, in which case he will not be deemed to have notice of a deed registered before the commencement of that period (s).

unpaid purchase-money where no memorandum.
Registration of deed not notice.

Land registered under the Land Transfer Act, 1875, is exempt from registration under the above local Registry Acts.

Land registered under Act of 1875 exempt.

The Yorkshire Registries Act, 1884 (t), which came into operation on the 1st January, 1885, repeals the former Acts. The following is a summary of its principal provisions:—

Principal provisions of Yorkshire Registries Act, 1884.

1. Assurances made, and the wills of testators dying, after the commencement of the Act, by which lands in Yorkshire are affected, may be registered (u).

Assurances and wills to be registered.

2. Registration may be by enrolling in the register a memorial, or, at the option of the person registering, a full copy of the assurance or will (x).

Mode of registration.

3. Assurance includes any conveyance, enlargement of term into fee simple, memorandum of charge, deed of consent to the discharge of a trustee, statutory receipt, private Act of Parliament, award or order of the Land Commissioners, order of a court, certificate of appointment of trustee in bankruptcy, or affidavit of vesting under any Act of Parliament (y).

Definition of "assurance."

4. A caveat may be registered by any person claiming an interest in land, to be in force for a period not exceeding six months, and if within that period a conveyance is executed and registered in favour of the person registering the caveat, it will be deemed to have been registered on the day on which the caveat was registered (z).

Caveats may be registered.

(q) *Sumpter v. Cooper*, 2 B. & Ad. 223; *Kettlewell v. Watson*, 26 Ch. D. 501.

(r) *Le Neve v. Le Neve*, 3 Atk. 646, 655; *Wyatt v. Barwell*, 19 Ves. 435.

(s) *Sug. V. & P.* 625; *Hodgson v. Dean*, 2 Sim. & Stu. 221.

(t) 47 & 48 Vict. c. 54.

(u) Sec. 4.

(x) Sec. 5.

(y) Sec. 3.

(z) Sec. 10.

Assurances to rank according to date of registration. Wills according to date of death, if registered within six months, if not, according to date of registration. Priority not affected by notice.

5. Every assurance is to have priority according to the date of registration, and every will according to the date of the testator's death, if the date of registration is within six months after the death, but if not, then according to the date of registration. This priority is to have full effect, except in cases of actual fraud, and no person claiming under a registered instrument is to lose priority, merely in consequence of his having been affected with actual or constructive notice, except in cases of actual fraud. But this provision is not to confer on a person claiming without valuable consideration any further priority than would belong to the person under whom he claims (a).

Notice of will may be registered in certain cases, and will itself be registered afterwards.

6. If a person interested under a will cannot register it within six months after the testator's death, he may register a notice of it, and in that case, if the will is duly registered within two years after the death of the testator, it will have priority as though it had been registered upon the date on which the notice was registered, and such last-mentioned date is for all purposes to be deemed to be the date of the registration of the will (b).

Heir may register affidavit of intestacy.

7. An heir may register an affidavit that he believes his ancestor to have died intestate, and in that case an assurance for valuable consideration by the heir duly registered is to have priority over any will of the supposed intestate, registered after the assurance, and after six months from the testator's death (c).

Lien for unpaid purchase-money, and charge by deposit of deeds, to be registered.

8. A lien for unpaid purchase-money, or a charge by deposit of title deeds, will have no priority against a subsequently registered assurance for valuable consideration, unless and until a memorandum thereof is registered (d).

Official searches.

9. Provision is made for official searches, and a record of the result of every such search is to be preserved at the office, and the registrar is to give a certificate of such result to any person requiring the

(a) Sec. 14.
(b) Sec. 11.

(c) Sec. 12.
(d) Sec. 7.

same, and every such certificate is to be receivable in evidence (e).

10. Any person is authorized on application to inspect and search the register and any other books and indexes which may be required to be kept at the register office under the Act or any rules made thereunder, and to take copies thereof or extracts therefrom (f).

Searches may be made and copies taken by any person.

11. Where any solicitor, trustee, executor, agent, or other person in a fiduciary position, either by himself or by a solicitor, obtains a certificate of the result of an official search, or a certified copy of any document enrolled in the register, or of any entry therein or any book or index kept at the office, he is not to be answerable for any loss, damage, or injury arising from any error therein (g).

Protection of solicitors, trustees, &c., in the case of certificates, &c.

12. In any case in which priority or protection might, but for the Act, have been given or allowed to any estate in lands by reason of such estate being protected by or tacked to any legal or other estate, no such priority or protection is in future to be so given or allowed, and full effect is to be given to this provision, although the party claiming such priority or protection may be a purchaser for valuable consideration without notice (h).

Protection by legal estate and tacking not to be allowed.

13. The Act does not apply to copyholds or to any lease not exceeding twenty-one years, or any assignment thereof where accompanied by actual possession from the making of such lease or assignment (i).

Exemption of copyholds, &c.

By the 15th section the registration of an instrument was made actual notice of it from the date of registration, but this section was repealed by the 48 & 49 Vict. c. 26.

It follows from what has been above said, that a purchaser of land in Middlesex or Yorkshire ought to search for registered documents in the local registry. As regards land in Yorkshire the search may be an official one.

Searches.

(e) Secs. 20, 21.
(f) Sec. 19.
(g) Sec. 23.

(h) Sec. 16.
(i) Sec. 28.

For what
period.

The search should extend over the whole period covered by the abstract, and if on such search any document affecting the property is found which is not abstracted, an abstract of it should be called for.

Right of pur-
chaser to
require regis-
tration.

The purchaser should also see that all documents requiring registration have been duly registered, and if it appears that any document has not been registered, he must determine whether, having regard to the subsequent dealings with the property, the want of registration prejudicially affects his title, and if it does, he should require the vendor to register it at his own expense. The purchaser must pay for the registration of his own conveyance.

Registered
conveyance by
devisee under
unregistered
will, prevails
over subse-
quently regis-
tered convey-
ance by heir.

By the Vendor and Purchaser Act, 1874 (*j*), it is enacted that where the will of a testator devising land in Middlesex or Yorkshire has not been registered within the period allowed by law in that behalf, an assurance of such land to a purchaser or mortgagee by the devisee or by some one deriving title under him shall, if registered before, take precedence of and prevail over any assurance from the testator's heir-at-law.

It follows that on a purchase of land in Middlesex from the devisee under a will where the six months have expired without registration, the purchaser need not require registration, provided that he satisfies himself that there is no registered assurance by the heir. As regards land in Yorkshire, it is apprehended that the above enactment is no longer in force, but the result will be the same under the new Act.

Conveyance
by heir when
good against
title under
unregistered
will.

Under the old Yorkshire Registry Acts, it was held that if a will was not registered within the prescribed time, and the heir made a conveyance to a purchaser for valuable consideration without notice which was registered, and afterwards a will was discovered and registered, the conveyance by the heir prevailed over the will (*k*). It is apprehended that under the new Act the heir must register an affidavit of intestacy, and that

(*j*) 37 & 38 Vict. c. 78, sec. 8.

(*k*) *Chadwick v. Turner*, L. R.
1 Ch. 310.

until this is done, the purchaser cannot safely take a conveyance from him.

*Judgments, Crown Debts, Lis Pendens, Annuities,
Deeds of Arrangement, and Land Charges.*

The usual searches on completing a sale or mortgage of land, whether situate in a register county or elsewhere, have hitherto been for judgments, Crown debts, executions, extents, *lis pendens*, and annuities. To these may now be added writs or orders affecting land, deeds of arrangement, and land charges. It is proposed in the remaining part of this Dissertation to consider, first, the law of judgments and executions as affecting land under three heads, viz.: (1) the law as it stood before the Act 1 & 2 Vict. c. 110; (2) the alterations made by that Act and subsequent Acts; and (3) the present law as the result of legislation and judicial decision. In the next place the law with respect to Crown debts, extents, *lis pendens*, annuities, deeds of arrangement and land charges as affecting land, will be stated; and the Dissertation will conclude with some practical directions as to the searches which, in the existing state of the law, ought to be made for these incumbrances.

Division of
subject.

The old Law as to Judgments.

The remedy of the judgment creditor against his debtor's lands has its origin in the Statute of Westminster the second (1). That Act enabled him to elect either to have a writ of *feri facias* against the debtor's goods, or that the sheriff should deliver to him "all the chattels of the debtor (saving only his oxen and beasts of the plough (m)), and the one-half of his lands, until the debt be levied upon a reasonable price and extent." Hence the writ was, and still is, called a writ of *elegit*.

Remedy by
elegit first
granted by
Statute of
Westminster.

The term "lands" in the statute included rent-

What could be
taken by *elegit*

(1) 13 Edw. 1, c. 18.

(m) It is now provided by the
Bankruptcy Act, 1883, sec. 145,

that a writ of *elegit* shall not extend to goods.

under the old law.

From what time judgment operated as a lien on lands.

Lien could be defeated by appointment under power.

Right of execution extended by Statute of Frauds to land vested in a trustee.

Equity of redemption, &c., could be reached through Court of Chancery by appointment of receiver.

charges(*n*), inappropriate rectories and tithes(*o*), and land in reversion expectant on a lease reserving a rent(*p*). Copyholds(*q*), however, could not be extended, nor an advowson in gross(*r*), nor an estate tail, so as to affect the issue(*s*).

A judgment was a general lien on the debtor's extendible freehold lands from the date of its being entered up, but chattels real were only bound from the time when the writ of execution was lodged with the sheriff. And if the debtor had a general power of appointment over land, and also an estate in the same land in default of and until appointment, the lien of the judgment upon the estate was liable to be defeated by a subsequent exercise of the power(*t*), even though the appointee had notice of the judgment(*u*).

Under the 10th section of the Statute of Frauds, execution might be had of land vested in a trustee for the debtor, provided that the trustee remained seised at the time of execution sued; but this section only applied where the trustee held on a simple trust for the debtor, and did not extend to an equity of redemption(*x*) or any equitable interest short of the absolute beneficial ownership(*y*). As regards equitable interests of this kind, the remedy of the creditor was to take proceedings in the Court of Chancery to have the legal impediment removed; *e. g.*, in the case of an equity of redemption by redeeming the mortgage, and to obtain in the meantime, by the appointment of a receiver, the same benefit which he would have had at law under an *elegit*, if the legal impediment had not existed. But it was necessary under the old law that the creditor should, before filing his bill, sue out an *elegit*(*z*).

(*n*) Moore, 32.
 (*o*) Co. Lit. 159.
 (*p*) 1 Roll. Ab. 894.
 (*q*) 3 Co. 9.
 (*r*) 3 Bac. Ab. 382.
 (*s*) *Ashburnham v. St. John*, Cro. Jac. 85.

(*t*) *Doe d. Wigan v. Jones*, 10 B. & C. 459.
 (*u*) *Eaton v. Sauxter*, 6 Sim. 517.
 (*x*) *Burdon v. Kennedy*, 3 Atk. 739.
 (*y*) *Harris v. Booker*, 4 Bing. 96.
 (*z*) *Neate v. Duke of Marlborough*, 3 M. & C. 407.

The Acts of the present Reign as to Judgments.

By the Act 1 & 2 Vict. c. 110, the remedy by elegit was extended to "all such lands, tenements, rectories, tithes, rents, and hereditaments (including lands and hereditaments of copyhold or customary tenure) as the person against whom execution is so sued, or any person in trust for him, shall have been seised or possessed of at the date of the judgment, or at any time afterwards, or over which such person shall at the time of entering up such judgment, or at any time afterwards, have any disposing power which he might without the assent of any other person exercise for his own benefit." And by sect. 13 a judgment was made a *charge* in equity on "all lands, tenements, rectories, advowsons, rents, and hereditaments (including lands and hereditaments of copyhold or customary tenure) of or to which such person shall at the time of entering up such judgment, or at any time afterwards, be seised, possessed, or entitled for any estate or interest whatever, at law or in equity, whether in possession, reversion, remainder, or expectancy, or over which such person shall at the time of entering up such judgment, or at any time afterwards, have any disposing power, which he might, without the assent of any other person, exercise for his own benefit, and shall be binding as against the debtor and all persons claiming under him, and shall also be binding against the issue of his body, and all other persons whom he might, without the assent of any other person, cut off and debar from any remainder, reversion, or other interest. But no judgment creditor shall be entitled to proceed in equity to obtain the benefit of his charge until the expiration of one year from the entering up of the judgment."

1 & 2 Vict.
c. 110, ss. 11
and 13.

Judgments
an equitable
charge.

The above Act and subsequent Acts, viz., 2 & 3 Vict. c. 11, 3 & 4 Vict. c. 82, and 18 & 19 Vict. c. 15, contained provisions to the effect that a judgment should not affect lands as against purchasers, mortgagees, and creditors, unless registered and from time to time re-registered in the Common Pleas, the last re-registration to be within five years before

Statutory provisions requiring judgments to be registered, in order to affect purchasers.

the date of the conveyance, &c., and that a judgment, though duly registered, should not affect a purchaser or mortgagee without notice further or otherwise than it would have affected him under the old law. And a subsequent Act, 23 & 24 Vict. c. 38 (sects. 1 and 2), provided that a judgment entered up after the 23rd July, 1860, should not affect a purchaser or mortgagee unless a writ or other process of execution should have been issued and registered in the name of the creditor before the execution of the conveyance or mortgage and payment of the purchase or mortgage money, and unless also such writ or other process of execution should be executed and put in force within three calendar months from the time when it was registered.

27 & 28 Vict.
c. 112.

No judgment
to affect land
until same has
been delivered
in execution.

By the 27 & 28 Vict. c. 112, after reciting that "it is desirable to assimilate the law affecting freehold, copyhold, and leasehold estates to that affecting purely personal estates in respect of future judgments, statutes, and recognizances," it is provided that "no judgment, &c. to be entered up after the passing of this Act" (viz., the 29th July, 1864) "shall affect any land of whatever tenure until the same shall have been actually delivered in execution by virtue of a writ of elegit or other lawful authority in pursuance of such judgment, &c." And the term "land" is to be interpreted as including "all hereditaments, corporeal or incorporeal, or any interest therein."

Writ of exe-
cution may be
registered,

and creditor
who has regis-
tered writ
may apply to
Court for an
order of sale.

The same Act provides for the registration in the Common Pleas in the name of the debtor of the writ or other process of execution whereby any hereditaments shall have been delivered in execution, and enables a creditor to whom any hereditaments shall have been delivered in execution, and whose writ, &c., has been duly registered, to obtain from the Court an order for the sale of the debtor's land.

Real Property
Limitation
Act, 1874, as to
money secured
by judgments.

By the Real Property Limitation Act, 1874 (*a*), "the right to recover any sum of money secured by a judgment, &c., charged upon or payable out of any land is barred at the end of twelve years next after a present right to receive the same has accrued to some

(*a*) 37 & 38 Vict. c. 57, sec. 8.

person capable of giving a discharge for the same, unless in the meantime there has been part payment of principal or interest or an acknowledgment of the right thereto given in writing signed by the person by whom the same is payable or his agent.

By the Land Charges Registration and Searches Act, 1888(*b*), it is provided that every writ and order affecting land issued or made by any Court for the purpose of enforcing any judgment, statute, or recognizance, and any order appointing a receiver or sequestrator of land, may be registered in the Office of Land Registry in the name of the person whose land is affected. The registration is to cease to have effect at the end of five years, but may be renewed from time to time, and if renewed will have effect for five years from the date of the renewal. This registration is to have the same effect, and renders unnecessary registration in the Central Office of the Supreme Court.

Land Charges Registration Act.

Writs of execution may be registered in office of land registry,

and registration renewed every five years.

The Act further provides that every such writ and order, and every delivery in execution or other proceeding taken in pursuance of any such writ or order, shall be void against a purchaser for value unless and until the writ or order is registered under the Act(*bb*). But if the writ or order is registered under the Judgment Act of 1864, registration under the new Act will not be necessary until the expiry of the period for which it is registered under the Act of 1864.

Writ, unless registered, to be void against purchaser for value.

The present Law of Judgments.

The present state of the law, as the result of the legislation above referred to and of judicial decision, is believed to be correctly summarized in the following paragraphs.

Summary of present law.

1. Judgments (which term includes all judgments, decrees, and orders of courts of law or equity whereby any sum of money or any costs, charges, or expenses are made payable to any person(*c*)) are enforceable against the debtor's lands, or such of them as are of an extendible nature, by means of a writ of elegit.

Judgments enforceable against land by elegit.

2. The process of execution on a writ of elegit is as

Process on an elegit.

(*b*) 51 & 52 Vict. c. 51, sec. 5.
(*bb*) Sect. 6.

(*c*) 1 & 2 Vict. c. 110, sec. 18.

Nature of
creditor's
estate under
an *elegit*.

follows :—The writ is placed in the hands of the sheriff of the county, who thereupon holds an inquisition before a jury to inquire what the lands are, and having ascertained this, he makes a return to the writ, stating that he has delivered the lands (specifying them) to the creditor. This return is the delivery of possession, and vests the land in the creditor, to hold to him and his assigns until the debt and interest shall have been levied. He can then bring an action of ejectment if the land is in possession, or if in reversion may sue for the rent.

What property
may be taken
on an *elegit*.

3. Every legal estate or interest in land in possession or reversion, if vested in the debtor beneficially, or over which he has a power of disposition exercisable for his own benefit, is extendible at law. So also is land vested in a trustee on a bare trust for the debtor, where the debtor has the whole beneficial interest. So also are impropriate rectories and tithes, but not a rectory or tithe constituting an ecclesiastical benefice (*c*), nor an advowson in gross, nor an estate in remainder (*d*). Where the legal estate of the debtor is subject to any equity, the judgment creditor will take subject to that equity, in other words, will take whatever beneficial interest the debtor has, and no more (*e*). And a voluntary settlement by the debtor is not avoided by a subsequent judgment (*f*).

Equitable
execution.

4. When the debtor's interest consists of an equity of redemption, or any other equitable interest not extendible at law, the Court will, at the suit of the creditor, appoint a receiver, and the order for the appointment of a receiver operates as an equitable execution. Since the Judicature Act, a receiver may be appointed by any branch of the High Court, and either in the same action in which the judgment was obtained, or in a new action (*g*); nor is it necessary to sue out a writ of *elegit* first, as was formerly the rule (*h*). Moreover, the jurisdiction is not now confined to cases

(*c*) *Hawkins v. Gathercole*, 6 D. M. & G. 1; *Bates v. Brothers*, 2 Sm. & G. 509.

(*d*) *Re South*, L. R. 9 Ch. 369.

(*e*) *Whitworth v. Gaugain*, 1 Ph. 728; *Kinderley v. Jervis*, 22 Beav. 1.

(*f*) *Beavan v. Earl of Oxford*, 6 D. M. & G. 507.

(*g*) *Smith v. Cowell*, 6 Q. B. D. 75.

(*h*) *Ex parte Evans*, 13 C. D. 252.

where the property cannot be extended at law, but may be exercised wherever, in the opinion of the Court, the rights of the parties can be more fairly and conveniently worked out by that means (*h*).

5. A judgment entered up before the 29th July, 1864, will not affect any future purchaser or mortgagee of land unless it has been kept alive as against the operation of the Statute of Limitations by some part payment of principal or interest, or acknowledgment signed by the debtor within twelve years before the date of the conveyance or mortgage, and unless also it has been duly registered and re-registered as required by the judgment Acts applicable thereto (*i*), the last registration being within five years before the date of the conveyance or mortgage, and unless also as regards a judgment entered up between the 23rd July, 1860, and the 29th July, 1864, a writ or other process of execution has been issued and registered, and such execution has been put in force within three calendar months from the date of its registration (*k*). If the judgment has been duly registered, but the purchaser has no notice of it, he will not be affected by any of the extended remedies conferred by 1 & 2 Vict. c. 110, but will be bound to the same extent only as he would have been bound under the old law.

Conditions under which a judgment entered up before 29th July, 1864, can now affect land as against purchasers.

6. A judgment entered up since the 29th July, 1864, does not affect any land (which expression includes any corporeal or incorporeal hereditament), and consequently does not affect any purchaser of land unless and until it has been actually delivered in execution by virtue of a writ of *elegit* or other lawful authority, *e.g.*, the appointment of a receiver (*l*). But if there has been a delivery in execution, whether legal or equitable, the right of the judgment creditor prevails over that of a subsequent purchaser, if the writ

Judgment entered up since 29th July, 1864, does not affect land until actual execution.

After execution, right of creditor prevails over that of subsequent purchaser without notice.

(*h*) *Re Pope*, 17 Q. B. D. 743.
(*i*) 1 & 2 Vict. c. 110, s. 19;
2 & 3 Vict. c. 11, s. 4.

(*k*) There must be few, if any, judgments entered up before 29th July, 1864, which, having regard to the above conditions, can now be

binding upon land.

(*l*) *Hutton v. Haywood*, 9 Ch. 229; *Re Cowbridge Ry. Co.*, 6 Eq. 619; *Becket v. Buckley*, 17 Eq. 435; *Wells v. Gilpin*, 18 Eq. 298; *Anglo-Italian Bank v. Davis*, 9 Ch. D. 275.

or order has been registered either in the Central Office under the Act of 1864, or in the office of Land Registry under the Land Charges, &c. Act, 1888 (*m*).

Registration of judgment now useless, but writ of execution should be registered.

7. It follows that as regards a judgment entered up since the 29th July, 1864, registration of the judgment itself is unnecessary and useless (*n*), but the writ of execution, unless registered before the 1st January, 1889, in the Central Office, ought to be registered in the office of Land Registry.

Position of other judgment creditors, where execution has been obtained by one.

8. Where there are two judgment creditors, A. and B., and A. takes the land in execution, B.'s position seems to be as follows: he may, as heretofore, take proceedings in equity to remove the impediment caused by A.'s *elegit*, *e.g.*, by redeeming him (*o*), and if A., before being redeemed, obtains an order of sale under sect. 5 of the Act of 1864, B. will be entitled to share in the surplus proceeds of the sale after A.'s claim is satisfied.

Execution after contract of sale.

9. If land is delivered in execution after the debtor has contracted to sell it, but before the purchase is completed, and the execution is duly registered, the judgment creditor will take subject to the contract; but it is apprehended that he would be entitled to be paid out of the purchase-money, and that the purchaser could not safely pay the money to the vendor (*p*).

Estate in remainder cannot be reached by judgment creditor, *semble*.

10. As an estate in remainder cannot be taken in execution either legal or equitable, it is apprehended that a purchaser of such an estate would not be affected by any judgment against the vendor entered up after the 29th July, 1864, whether he has notice of it or not, and that the judgment creditor has no remedy against the land until the debtor's estate falls into possession.

Effect of Judgment Acts as to creditors.

Although not strictly within the scope of this Dissertation, the following observations on the effect of

(*m*) Registration in the Central Office, under the 27 & 28 Vict. c. 112, is not necessary in order to affect a purchaser. *Re Pope*, 17 Q. B. D. 743.

(*n*) *I. e.*, as against the debtor's land. But it appears to be still necessary to register a judgment

in order to give it priority over other debts in the administration of the assets of a deceased debtor. See 23 & 24 Vict. c. 38, sec. 3.

(*o*) *Re Cowbridge Ry. Co.*, L. R. 5 Eq. 413.

(*p*) *Thornton v. Finch*, 4 Giff. 505.

the Judgment Acts in regard to creditors, as between themselves, will probably be found useful.

Judgments entered up before the 29th July, 1864, rank as against the debtor's land according to priority of registration.

Priority of judgment creditors before and since 1864, how ascertained.

As between two judgment creditors whose judgments were respectively entered up between the 23rd of July, 1860, and the 29th of July, 1864, the former is not obliged to sue out execution on his judgment in order to preserve his priority against the latter.

As regards judgments entered up subsequently to the 29th of July, 1864, the creditor who first places the writ in the sheriff's hands has the priority (*q*).

A judgment being a debt of record has priority over other debts in the administration of the debtor's estate after his death; but in order to preserve this priority, it must be registered under the Judgment Acts, the last registration or re-registration being within five years previously to the debtor's death (*r*).

How far registration necessary to preserve priority of judgments in the administration of debtor's estate. 23 & 24 Vict. c. 38, ss. 3, 4.

Registration is not, however, necessary as regards a judgment obtained after the testator's or intestate's death against his executor or administrator. If, therefore, a creditor after the debtor's death sues the executor and obtains judgment, he acquires a priority over other creditors of equal degree who have not shown the same diligence; and as specialty and simple contract debts are now placed on the same footing (*s*), a judgment against an executor for a simple contract debt obtained before the date of the judgment in an ordinary administration suit, gives to such debt indirectly priority over specialty debts, whether such judgment be registered or not, and this priority is not affected by sect. 10 of the Judicature Act, 1875 (*t*).

(*q*) *Guest v. Cowbridge Ry. Co.*, L. R. 6 Eq. 619.

(*r*) 23 & 24 Vict. c. 38, ss. 3, 4. See *Simpson v. Morley*, 2 K. & J. 71.

(*s*) Stat. 32 & 33 Vict. c. 46.

(*t*) *Jennings v. Rigby*, 33 Beav. 198. *Re Williams's Estate*, L. R. 15 Eq. 270; *Smith v. Morgan*, 5 C. P. D. 337. See also *Winehouse v. Winehouse*, 20 Ch. D. 545.

Crown Debts.

Crown debts upon record or by specialty enforceable by extent against freehold and leasehold property, but not against copyholds.

Subject as regards purchasers and mortgagees to the enactments presently mentioned, debts due to the Crown upon record or by specialty (*x*) are a lien on, and may be enforced by a writ of extent against, all freehold property belonging to the debtor at the time when the debt becomes one of record or the specialty debt is contracted, or at any time afterwards, including equities of redemption and other equitable interests, rents, and impropriate tithes. If the debtor dies before an extent is issued, the lands may be taken in the hands of his heir or issue in tail (*y*), the writ in that case being called a writ of *diem clausit extremum*.

Copyholds.

Copyholds are not extendible by Crown process, and chattels real are only bound from the *teste* of the extent.

Crown debts cannot be defeated by execution of power.

Crown debts cannot be defeated by the execution of a power (*z*); but the Crown is bound by all interests actually created before the lien of the Crown has attached, and this would include an equitable mortgage by deposit of title deeds (*a*).

A simple contract debt to the Crown is no charge on the debtor's land, until it becomes one of record.

Accountants to the Crown in the same position as specialty debtor.

An accountant to the Crown is by the Act 13 Eliz. c. 4, placed in the same position as a debtor to the Crown by specialty.

Purchasers and mortgagees are protected against Crown debts, &c., by the following enactments.

Provisions for registration of Crown debts, &c. as to purchasers, &c.;

By the 8th section of the 2 & 3 Vict. c. 11 (which is applicable to Crown judgments, &c., obtained between the 4th June, 1839, and the 5th July, 1865), it was enacted that no judgment, &c., thereafter to be obtained or entered into in the name or upon account of her Majesty, or inquisition by which any debt should be found due to her Majesty, or obligation or specialty thereafter to be made, or any *acceptance of office* there-

(*x*) 33 Hen. 8, c. 39, s. 36.

(*y*) *Ib.* sect. 52, Lord Anderson's case, 7 Co. 21a.

(*z*) Reg. v. Ellis, 19 L. J. (N. S.) Ex. 77.

(*a*) Casbard v. Attorney-General, 6 Price, 411.

after to be accepted by officers whose lands should thereby become liable for the payment of arrearages under the Act of the 13 Eliz. c. 4, should affect any lands, &c., as to purchasers or mortgagees, until registered as therein mentioned in the Common Pleas. And by the 22 & 23 Vict. c. 35, s. 22, judgments, &c., registered as above, are required to be re-registered in order to bind lands, &c., as against purchasers, mortgagees, or creditors becoming such after the 31st of December, 1859, the last re-registration to be within five years before the date of the conveyance, &c., as it was obligatory on a private person.

and for re-registration every five years.

As to Crown debts dated subsequently to the 5th July, 1865, it is enacted by the 28 & 29 Vict. c. 104, s. 48, that any judgment, &c., obtained after that date by or on behalf of the Crown, or any obligation or specialty made after that date to the Crown, or any acceptance of office accepted after that date from or under the Crown, shall not affect any lands as to a *bonâ fide purchaser or mortgagee*, whether he have notice or not, unless a writ of extent or other process of execution thereon is issued and registered before the execution of the conveyance, &c., and the payment of the purchase or mortgage-money; and the 49th section prescribes the mode of registration of the writ or other process in the Common Pleas, and provides that no other registration of such writ or other process, or of the judgment, &c., in pursuance of or in relation to which it is issued shall be necessary for any purpose. It follows that a purchaser will not be affected by any Crown debt, &c., dated before the 5th July, 1865, unless it has been registered or re-registered within five years previously to the conveyance, and will not be affected by any Crown debts, &c., contracted since that date, unless a writ of extent has been issued and registered (b).

Crown debts dated since 5th July, 1865, do not affect purchasers, &c., unless writ of extent issued and registered.

(b) For further information on the subject of Judgments and Crown debts, the reader is referred

to *Prideaux's Treatise on Judgments and Crown Debts, as they affect real property*, 4th ed.

Lis pendens.

Lis pendens,
what it is.

A person who purchases during the pendency of a suit relating to the subject of his purchase, is bound by the decree that may be made against the person through whom he derives title, whether he has notice of the pending proceedings or not (*c*); in other words, neither party to a litigation can alienate the property in dispute so as to affect his opponent. The doctrine of *lis pendens* is founded, not upon any peculiar principles of a Court of Equity as to implied or constructive notice, but is common to Courts both of Law and Equity, and rests upon this foundation, that it would be impossible that any action or suit could be brought to a successful termination if alienations *pendente lite* were permitted to prevail.

Suit must be
pending.

Purchaser
only bound by
rights affect-
ing the estate
itself.

With regard to the application of the doctrine, it should be borne in mind, first, that the suit must be *pending*, for there is no such doctrine as that a decree of a Court is to be deemed implied notice to a purchaser after the cause is ended (*d*); and, secondly, that the purchaser is only bound by rights ascertained in the suit affecting the estate itself which he purchases. Thus in *Worsley v. Earl of Scarborough* (*e*), it was held that where money is secured on an estate, and there is a question depending in the Court upon the right of or about that money, but no question relating to the estate whereon it is secured, a purchaser of the estate pending the suit without actual notice is not affected by the decree. Again, in *Bellamy v. Sabine* (*f*), a person took a mortgage from one of the defendants in a pending suit, and it was held that he was not affected by an equitable title of another defendant which appeared on the face of the proceedings, but of which such mortgagee had not notice, and to which it was not necessary for any of the purposes of the suit to give effect. Turner, L. J., in the course of his judgment, distinguished the case from one where the rights of the

(*c*) *Bishop of Winchester v. Kinsman*, 1 R. & M. 617.
Payne, 11 Ves. 194, 197. (*e*) 3 Atk. 391.

(*d*) 3 Atk. 391; *Kinsman v.* (*f*) 1 De G. & Jones, 584.

plaintiff might require that there should be an adjudication between the defendants.

If an action is instituted for the administration of the estate of a deceased person or for the execution of the trusts of a deed or will, its effect as regards the power of an executor, trustee, or devisee to sell and make a good title may thus be stated:—

How far the right of an executor or trustee to sell is affected by a pending action.

1. An executor may sell leasehold property at any time before decree (*g*), nor does the ordinary administration decree prevent him from selling it afterwards, unless a receiver is appointed, or an injunction is granted to restrain him (*h*), or unless an order is made for sale of it by the Court (*i*).

Executor may sell leaseholds notwithstanding administration decree, except in certain cases.

2. An executor or trustee having power under the will to sell real estate for payment of debts, either by reason of an express trust for that purpose, or of there being a charge of debts, can sell and make a good title under that power at any time before decree, but not afterwards without the direction of the Court (*k*). And generally trustees under a deed or will cannot after a decree for the execution of the trust by the Court exercise trusts or powers without the sanction of the Court; but a tenant for life under the Settled Land Act is not precluded by decree from selling under the statutory power (*l*).

Executor or trustee cannot sell real estate after decree without sanction of Court.

3. A specific devisee of freehold land not charged with the payment of the testator's debts can sell at any time before decree, if the action is for administration generally, but not if the indorsement of the writ or statement of claim seeks relief against that particular land and the devisee is made a defendant for that purpose (*m*).

Specific devisee of land may sell before administration decree, unless made defendant.

Notice of a *lis pendens* is not an incumbrance. If therefore the claim in respect of which the suit is

Notice of *lis pendens*.

(*g*) *Neeves v. Burrage*, 14 Q. B. 504; 19 L. J. Q. B. 68.

(*h*) *Berry v. Gibbons*, L. R. 8 Ch. 747.

(*i*) Such an order would no doubt supersede the power of the executor to sell in any other way.

(*k*) *Cafe v. Bent*, 3 Hare, 245; *Walker v. Smallwood*, Amb. 676.

In this case the defendant's answer submitting to have the estate sold by the Court must have been considered as equivalent to a decree.

(*l*) *Cardigan v. Curzon Howe*, 30 Ch. D. 531.

(*m*) *Price v. Price*, 35 Ch. D. 297; *Tyler v. Thomas*, 25 Beav. 47.

instituted is unsustainable, a purchaser cannot refuse to complete on account of the pending of the suit (*n*).

Lis pendens
must be regis-
tered.

The 2 & 3 Vict. c. 11, s. 7, provides that no *lis pendens* shall bind a purchaser or mortgagee without express notice thereof, unless and until registered and re-registered in the Common Pleas in manner therein provided.

It has been already stated that under the Land Charges Act, &c., 1888, a writ or order affecting land may now be registered in the office of Land Registry, and that such registration renders unnecessary registration in the Central Office of the Supreme Court (*nn*). The Act provides that where the proceeding in which the writ or order was issued or made is for the time being registered as a *lis pendens*, the operation of the last-named registration is not to be affected (*o*).

Annuities.

Rent-charges
for life must
be registered,
subject to
certain excep-
tions.

By the 18 & 19 Vict. c. 15, s. 12, it is provided that any annuity or rent-charge granted after the passing of the Act, otherwise than by marriage settlement, for one or more life or lives, or for any term of years, or greater estate determinable on a life or lives, shall not affect any lands, &c., as to purchasers, mortgagees, or creditors, unless and until registered in the Common Pleas in manner therein provided; but annuities or rent-charges given by will are excepted.

Unregistered
annuity good
against subse-
quent pur-
chasers with
notice.

An unregistered annuity is good against subsequent purchasers with notice, and against trustees in bankruptcy and judgment creditors, whether they have notice of it or not (*oo*).

(*n*) Bull v. Hutchons, 9 Jur. 954.

(*nn*) See *supra*, p. 159.

(*o*) Sect. 6.

(*oo*) Greaves v. Tofield, 14 Ch. D. 563.

Deeds of Arrangement.

Deeds of arrangement between a debtor and his creditors are required by the Deeds of Arrangement Act, 1887 (*p*), to be registered in the Bills of Sale department of the Central Office of the Supreme Court, and if not so registered are void.

Deeds of arrangement must be registered in Central Office.

The Land Charges Registration and Searches Act, 1888, directs that there shall be kept at the office of Land Registry a register of deeds of arrangement affecting land. In this register a deed of arrangement may be registered in the name of the debtor on the application of a trustee of the deed, or of a creditor assenting to or taking the benefit of the deed (*pp*). And it is provided that every deed of arrangement, whether made before or after the commencement of the Act, shall be void as against a person who, after the commencement of the Act, becomes a purchaser for value of any land comprised therein, or affected thereby, unless such deed is registered as above. But the enactment is not to affect any deed of arrangement made before the commencement of the Act until the expiration of one year from such commencement if registered within that year (*q*).

Register of deeds of arrangement at office of Land Registry, in which register these deeds may be registered, and if not so registered, are void against purchaser for value.

The result of the above enactments is, that a deed of arrangement is absolutely void unless registered in the Central Office, and if made after the 1st January, 1889, is void against a purchaser for value, unless it is also registered in the Land Registry Office. A deed of arrangement made between the 1st January, 1888, and the 1st January, 1889, will be void against a purchaser for value after the 1st January, 1890, unless registered also in the Land Registry Office.

Result of enactments.

Land Charges.

Besides the register above mentioned, the Land Charges, &c. Act, 1888, directs that there shall be kept at the office of Land Registry, a register of "land charges," which term is defined to mean a rent or annuity or principal moneys payable by instal-

Register of land charges.

ments, or otherwise, with or without interest charged, otherwise than by deed, upon land, under the provisions of any Act of Parliament, for securing to any person either the moneys spent by him or the costs, charges, and expenses incurred by him under such Act, or the moneys advanced by him for repaying the moneys spent, or the costs, charges, and expenses incurred by another person under the authority of an Act of Parliament^(r), and a charge under the 35th section of the Land Drainage Act, 1861, or under the 29th section of the Agricultural Holdings (England) Act, 1883, but does not include a rate or scot^(s).

Land charges,
how to be
registered.

Any land charge, as above defined, may be registered in the register of land charges: in the case of freehold land in the name of the person beneficially entitled to the first estate of freehold, and in the case of copyhold land in the name of the tenant on the court rolls at the time of the creation of the land charge. Where the person by whom the application was made, pursuant to which the land charge was created, was beneficially entitled to a lease for lives or a life at a rent or to a term of years, the land charge is to be registered also in the name of that person^(t).

Land charge,
unless regis-
tered, void
against pur-
chaser for
value.

Any land charge created after the commencement of the Act is void against a purchaser for value unless registered^(u); and after the expiration of one year from the first assignment by act *inter vivos* occurring after the commencement of the Act of a land charge created before that date, the person entitled thereto will not be able to recover it against a purchaser for value, unless it is registered before the completion of the purchase^(v).

Searches.

Registers of
judgments,
&c., now kept
at the Central
Office of the
Supreme
Court.

The registers of judgments, Crown debts, executions, extents, *lis pendens*, and annuities, which were formerly kept in the Common Pleas office, have been transferred to the Central Office of the Supreme Court,

^(r) The terminable rent-charges created under the Improvement of Land Act, 1864, come within this definition.

^(s) Sect. 4.
^(t) Sect. 10.
^(u) Sect. 12.
^(v) Sect. 13.

where they may now be searched by any person interested in having the search made or his solicitor, or any such person may require an official search to be made on his behalf under sect. 2 of the Conveyancing Act, 1882. The certificate obtained on an official search is conclusive, and therefore a complete protection to the purchaser.

Official search authorized by Conveyancing Act, 1882.

The Conveyancing Act, 1882, and the Rules of December, 1882, made under sect. 2 of that Act, and the forms of declaration as to purposes of search, requisitions for search, and certificates of the results of search, are set out at length in the Appendix to this volume.

The registers kept at the office of Land Registry under the Land Charges, &c., Act, 1888, may also be searched, and the provisions as to searches in the Central Office contained in sect. 2 of the Conveyancing Act, 1882, are made applicable to searches in the registers in the office of land registry (x). Rules have been made under the Act of 1888, which are also set out in the Appendix.

Registers kept at office of Land Registry may be searched.

The practice as to searches should in future be as follows: If the vendor is a beneficial owner the purchaser should make a requisition for an official search in the Central Office according to the Form No. VI. annexed to the Rules of December, 1882, and for an official search in the office of Land Registry in the Form No. V. annexed to the Land Charges Rules, 1889. The search in the Central Office will be in the name of the vendor (1) for judgments, revivals, decrees, orders, rules, and *lis pendens*, and for judgments at the suit of the Crown, statutes, recognizances, Crown bonds, inquisitions, and acceptances of office for a period extending back five years; (2) for executions for a period extending back to the 29th July, 1864, or to the time when the vendor's title first accrued, if later than that day; and (3) for annuities for a period extending back to the 26th April, 1855, or to the time when the vendor's title first accrued, if later than that day. The search in the office of Land Registry will be in the name of the vendor (1) in the register of

What searches should now be made.

Against a vendor being a beneficial owner.

(x) Sect. 19.

writs and orders for a period extending back five years, and (2) in the register of deeds of arrangement, and the register of land charges for the whole period covered by the register, unless the vendor's title has accrued since the commencement of the register, in which case the search will be for the period during which the vendor has been entitled.

What should
be done if
judgment, &c.
disclosed.

If the certificate of search discloses a judgment which was originally entered up before the 23rd July, 1860 (*t*), or a Crown judgment, &c., obtained before the 5th July, 1865, the satisfaction or release of the judgment, or a *quietus* as regards the Crown debt, should be required.

If a judgment is disclosed which was entered up between the 23rd July, 1860, and the 29th July, 1864, then a further search should be directed in the name of the *creditor* to ascertain whether any writ of execution thereon has been issued and registered. If no such registered execution is found, and no action has been taken thereon for three months from the registration, it may be disregarded.

If a judgment is disclosed which was entered up since the 29th July, 1864 (*u*), the purchaser need take no notice of it, unless a writ or order of execution under it is registered either in the Central Office or in the office of Land Registry.

If the search in the office of Land Registry discloses any writ or order affecting the land or any deed of arrangement or land charge, the incumbrance must of course be got rid of.

Search to be
made where
vendors are
trustees.

If the vendor is a trustee, a search for *lis pendens* should be made in his name, both in the Central Office and also in the office of Land Registry; and if there are two or more trustees, a search in the name of one, if he has been a trustee the whole time, would appear to be sufficient.

(*t*) It is apprehended that there are very few (if any) judgments now on the register which were originally entered up before this date, or even before the 29th July, 1864.

(*u*) Although as against the debtor's land, judgments entered up

since the 29th July, 1864, need not be registered, it is supposed that a registered judgment still has an advantage over an unregistered one in other respects, *e.g.* in the administration of assets, and it is therefore still usual to keep on re-registering them.

If the vendors are trustees selling under a trust for sale, and there is a person entitled for life or otherwise to the income of the proceeds of sale in whom a power of sale is vested by virtue of sect. 63 of the Settled Land Act, 1882, and such person does not concur in the present sale, a search should be made for a *lis pendens* in the names of the trustees, or in the name of one of them, in order to ascertain whether an order has been made under sect. 7 of the Settled Land Act, 1884, for giving leave to the tenant for life to exercise the statutory powers.

If the vendor has acquired the property recently by descent or devise, it will be desirable to extend the search to his deviser or ancestor. If he has acquired it by a recent purchase he should be asked to produce the certificate of search made by him against his vendor.

Search when vendor has become entitled by descent or devise.

If the result of a search discloses a deed of arrangement, or if for any other reason there is ground for suspicion that the vendor may have been made a bankrupt, a further search should be made in the records of the Bankruptcy Court.

Cases in which the records of the Bankruptcy Court should be searched.

An inquiry should always be made of the tenant (if any) of the property, as to the nature and terms of his tenancy.

Inquiry of tenants.

Where the subject of sale or mortgage is a chose in action of any description, as, for instance, personalty vested in trustees, a debt, or policy of insurance, &c., inquiry should be made of the legal holder or holders as to what notice they have received of prior incumbrances, and also notice should be given to them of the purchase or mortgage as soon as the transaction is completed. The rule in such cases is, that of two purchasers or incumbrancers, the one who gives priority of notice is entitled to preference.

Inquiries as to notice on sale or mortgage of chose in action.

III.—PURCHASE DEEDS.

In this Dissertation it is proposed to consider:—
1. The mode of assurance of freehold estates. 2. The mode of assurance of copyhold estates, and other

Division of the subject.

matters relating to copyholds. 3. The disabilities of certain persons in regard to the sale and purchase of land. 4. The form and ordinary parts of a deed of conveyance, and matters relating to the conveyance. 5. The arrangements to be made on a purchase in relation to the custody of the title deeds, attested copies, &c. 6. By whom the expenses of and incidental to the conveyance are to be borne. 7. The stamps on conveyances.

I. *The mode of assurance of freehold estates.*

Feoffment
ancient mode
of conveying
freeholds.

A feoffment with livery of seisin was the ancient mode of conveying a freehold estate in possession in corporeal hereditaments, while incorporeal hereditaments, such as rents, advowsons, reversionary interests in freeholds, &c., being incapable of livery, were transferred by grant: hence the distinction between corporeal and incorporeal hereditaments, that the former were said to lie in livery, the latter in grant. Subsequently to the Statute of Uses, the same object as to corporeal hereditaments was effected by a bargain and sale by deed enrolled within six months, the bargain and sale raising the use and the statute transferring the legal estate to the bargainee. But as the Act (x) which made enrolment of the deed necessary related only to estates of inheritance or freehold, chattel interests in land were not included in its operation. Accordingly, the mode of conveyance by lease and release was adopted, which at once got rid of both the inconvenient ceremonies of livery of seisin and enrolment. After the passing of the Statute of Uses, this mode of conveyance operated as follows: the lease was a bargain and sale for a year made to the purchaser in consideration of a nominal sum, by which he became without entry legal tenant in possession for one year under the statute. The purchaser being by this means put in possession of the property, only a

Lease and
release.

(x) 27 Hen. 8, c. 16.

reversion was left in the vendor. This reversion being a proper subject of release at common law, was by a deed dated the next day released to the purchaser.

By the Act of the 4 & 5 Vict. c. 21, a release alone was made effectual for the conveyance of lands, provided the deed was expressed to be made in pursuance of that Act: and by the 8 & 9 Vict. c. 106, s. 2, all corporeal hereditaments are made to lie in *grant* as well as livery, so that there is no further occasion to make the conveyance by a release grounded on a lease for a year, or to refer to the Act passed for dispensing with a lease for a year. Whilst, then, reversionary interests in freeholds pass by grant at common law, freehold hereditaments in possession will now pass by statutory grant. But it is not necessary to use the word "grant" in order to convey either corporeal or incorporeal hereditaments (*y*). Statutory release.
Grant.
Convey.

II. *The mode of assurance of copyhold estates, and other matters relating to copyholds.*

The usual mode of alienating copyholds is by a surrender into the hands of the lord of the manor of which the lands are held to the use of the purchaser, and the admittance of the latter, by whom a fine is paid. The fine is either certain or arbitrary: but if arbitrary, must be reasonable, which has been defined to mean, must not (except, perhaps, on the admittance of joint tenants), exceed two years' improved value of the land (*z*). These proceedings are formally entered on the Court Rolls, and a copy of the Court Rolls is delivered to the purchaser. The admission should be made in strict accordance with the terms of the surrender (*a*); and if there is any variation, the admittance will operate according to the surrender (*b*). Until the admission of the surrenderee, the surrenderor Mode of alienating copyholds.
Form of admission.

(*y*) Conveyancing Act, 1881, sect. 317.
49. (*a*) *Haward v. Raw*, 6 H. & N. 308.
(*z*) 1 Watk. Cop. 308; Scri. Cop. (*b*) Scri. Cop. 312.

remains tenant to the lord, and the legal estate remains in him.

Surrender may be made in Court or out of Court.

The surrender may be made either in Court or out of Court. If made in Court it is entered on the Court Rolls, and a copy of the roll, so far as relates to the surrender, is made by the steward, stamped with the proper *ad valorem* duty, and delivered to the purchaser, If made out of Court, a written memorandum is made of the proceedings, signed by the parties and the steward; and the surrender, all presentments being now dispensed with, is forthwith entered on the Court Rolls (*c*).

Surrenderee cannot surrender until admittance.

A copyholder after a surrender by him cannot surrender to another (*d*); and a surrenderee cannot surrender until he himself has been admitted (*e*).

Purchase of copyholds by corporation.

Copyholds, when purchased by a corporation which is empowered to hold land, should be surrendered to trustees for their benefit, and not to the corporation directly, as the lord would be justified in refusing admittance to a body who could not discharge the services, and the effect of which admittance would also be the loss of the fines consequent upon death (*f*).

Owner of legal estate real tenant.

If the legal estate in copyholds is vested in a trustee by admission, he is the tenant, and is consequently responsible to the lord for the performance of the feudal services, and the customary fines will be payable on his death and alienation, and not on the death or alienation of the equitable owner.

Admission of joint-tenants, &c.

Joint-tenants are but one tenant to the lord, and coparceners are but as one heir; so that the admission of one of many joint-tenants or co-parceners is the admission of all. They are consequently admitted on the payment of one fine (*g*); and on such admittance it would seem that in the absence of special custom the steward is only entitled to one fee (*h*). Joint-tenants or coparceners, when once admitted, can, without the payment of any additional fine, release their share to

(*c*) Wms. Real Prop. 338, 9th ed.;
4 & 5 Vict. c. 35, ss. 89, 90.

(*d*) Scri. Cop. 118.

(*e*) Scri. 117, 200.

(*f*) 1 Watk. Cop. 299.

(*g*) Scri. Cop. 347.

(*h*) Traherne v. Gardener, 5 El. &
Bl. 913.

each other by deed of release. Where two out of three devisees in trust of copyholds released by deed their shares to the remaining trustee, the lord was held to be entitled only to a single fine on the admission of the remaining trustee, and the deed of release was held to operate as a disclaimer by the releasors of their right to be admitted (*i*).

But if one of several trustees purports to disclaim after he has acted, the disclaimer is void, and the admission of one will be held the admission of all, and the fine must be paid accordingly (*k*).

Disclaimer by one trustee.

In a case where a sole trustee died after admittance, and, his customary heir being out of the jurisdiction, a new trustee was appointed under the Trustee Act, it was held that one fine only was payable on the admittance of the latter (*l*).

Death of sole trustee after admittance.

Tenants in common, on the other hand, must be admitted severally, and a fine must be paid in respect of the share of each. On the death of tenants in common and coparceners, as there is no survivorship, their heirs and representatives must be admitted, and pay several fines for the shares to which they respectively may be admitted (*m*).

Tenants in common, &c.

Admission of representatives of tenants in common, &c.

If a copyhold tenement is limited to A. for life or for a less interest with remainders over, the admission of A. is the admission of all in remainder, and one fine only is payable (*n*), unless there is a special custom to the contrary (*o*). It would appear that the lord may take the full fine from the tenant for life or may apportion it between him and the remainderman (*p*).

Admission of tenant for life generally admission of remainderman.

(*i*) *Wellesley v. Withers*, 4 El. & Bl. 750.

(*k*) *Bence v. Gilpin*, 3 Exch. 76.

(*l*) *Bristowe v. Booth*, 5 C. P. 80.

(*m*) *Scriv. Cop.* 297; 1 *Watk. Cop.* 82.

(*n*) *Brown's Case*, 4 Co. 22 b.

(*o*) *Doe d. Whitbread v. Jennings*, 5 East, 522; *Smith v. Glasscock*, 27 L. J. C. P. 192.

(*p*) *Scriv. Cop.* 343; *Blackburne v. Graves*, 1 Mod. 120. In this case Lord Hale said: "I do not see any

inconvenience whereby the admission of a tenant for life is not the admission of all in remainder, for fines are to be paid notwithstanding by the particular remainders; and so the books say it shall not prejudice the lord. It shall not prejudice the lord, for if a fine be assessed for the whole estate, there is an end of the business; but if a fine be assessed for the particular estate only, the lord ought to have another."

And of
appointee in
remainder.

Where a copyhold tenement is limited to A. for life, with remainder to such persons as A. shall appoint, it is apprehended that the appointee is in the same position as if he had been named in the will, so that the admission of A. enures to his benefit (*q*).

Admission of
devisee in fee
enures for
benefit of
executory
devisee.

Again, if a copyhold tenement is devised to A. in fee, subject to an executory devise over to B. upon an event which happens, the admission of A. enures to the benefit of B. (*r*).

Remainder-
man may
surrender.

As the admission of the tenant for life is, in the absence of a special custom, the admission of the remainderman, it follows that the latter may during the continuance of the particular estate surrender (*s*). But if there is a special custom requiring a remainderman to be admitted, then if he applies for admission during the continuance of the particular estate, he must pay the fine immediately (*t*).

Also heir of
remainder-
man, on pay-
ment of fine.

If a remainderman dies and his heir surrenders, the lord cannot be compelled to accept the surrender, whether made in the lifetime of the tenant for life or afterwards, until the fine on the descent is paid (*u*).

Devises of
remainder-
man must be
admitted.

If the remainderman has devised his estate, the devisee must be admitted on the death of the tenant for life, and if he wishes to surrender in the lifetime

(*q*) *Lord Kensington v. Mansell*, 13 Ves. 246. In *Seaman v. Woods*, 24 Beav. 372, a copyhold was devised to A. for life, and the executors were directed to sell after A.'s death, which they did, and bargained and sold the property to B., the purchaser. Romilly, M. R., was of opinion that the admission of A. was not the admission of B. It will be seen that the will contained no devise in remainder after the death of A., so that the copyhold descended to the heir-at-law, and the subsequent conveyance to B. operated not as a remainder, but as an executory devise displacing the heir's title by descent. If the will had devised the property after the death of A. to C., the question would have been different, and it is submitted that in that case the

admission of A. would, in the absence of a special custom, have been the admission of C. and also of B. See *Randfield v. Randfield*, *infra*.

(*r*) This was so decided by *Kindersley, V.-C.*, in *Randfield v. Randfield*, 1 Dr. & Sm. 310; and although the decision was reversed by the Court of Appeal, on the ground that there was a special custom requiring remaindermen to be admitted, *Turner, L.J.*, expressed his concurrence in the opinion of the *V.-C.* on the general question.

(*s*) *Gyppen v. Burney*, Cro. Eliz. 504; *Auncelme v. Auncelme*, Cro. Jac. 31.

(*t*) *Evelyn v. Worsfold*, 15 L. T. R. 4.

(*u*) *Reg. v. Lady of the Manor of Dullingham*, 8 Ad. & Ell. 858.

of the tenant for life, he must be admitted and pay the fine before he makes the surrender.

If a remainderman surrenders or devises his estate, and the surrenderee or devisee dies during the continuance of the particular estate, his heir can claim to be admitted on the payment of a single fine (*x*).

If a copyholder surrenders to particular uses which determine, he is in of his old seisin, and need not be admitted again (*y*). And if a copyholder devises to uses which do not exhaust the whole fee, the reversion descends to the heir (*z*).

When uses determine, copyholder is in of his old seisin.

In a case where copyhold land was devised to trustees for a term of years, and subject thereto to A. in fee, and the lord admitted A. "according to the purport and effect of the will," who paid a full fine, it was held that the lord could not afterwards insist on the admittance of the trustees (*a*).

Admittance of termor cannot be insisted on.

On the death of a tenant in possession intestate, the heir must come in and be admitted, or the lord may seize the lands into his hands *quousque* after proclamation has been made at three consecutive courts (*b*); and if the lord holds under such a seizure for twelve years, there being no disability, the heir's right to compel admittance is gone (*c*).

Heir must be admitted, or lord may seize.

Where property is in settlement, and an admission takes place on the appointment of new trustees, the fine payable in respect of such admission must be borne by the particular estate and the estate in re-

Admission on appointment of new trustees.

(*x*) *Garland v. Alston*, 4 Jur. N. S. 539.

(*y*) 9 Co. 107 a.

(*z*) *Bullen v. Grant*, Cro. Eliz. 148. In *Doe d. Winder v. Lawes*, 7 Ad. & Ell. 195, it was held, that if a copyhold is devised to A. for life, and the reversion descends on the heir, the admission of A. is the admission of the heir, and that there is no difference in this respect between a reversion and a remainder; but in another case the Court expressed a contrary opinion, and decided that the lord could not be compelled in

such a case to accept a surrender by the heir until the descent fine was paid.

(*a*) *Everingham v. Ivatt*, L. R. 7 Q. B. 683; 8 *ib.* 388.

(*b*) *Scri. Cop.* 226, 5th ed. The 11 Geo. 4 & 1 Will. 4, c. 65, sects. 5—9, and 16 & 17 Vict. c. 70, sects. 108—111, contain provisions to meet the case of the heir, &c. being an infant, married woman, lunatic, or idiot.

(*c*) *Walters v. Webb*, L. R. 5 C. A. 531; 3 & 4 Wm. 4, c. 27, sects. 2, 3.

mainder, in proportion to the value of such estates respectively (*d*).

Release from
trustees.

Where copyholds were devised to trustees for certain persons who sold the copyholds, and the purchaser was admitted on the surrender of the customary heir, the purchaser was held entitled to call for a release from the trustees of their bare right to be admitted (*e*).

Statute of
Uses.

The Statute of Uses does not extend to copyholds, so that if a surrender is made to the use of A. in trust for B., A. is the person to be admitted, and B. has only an equitable estate.

Statute
De donis.

The Statute *De Donis* does not apply to copyholds, so that unless the custom of the manor authorizes the creation of entails, all *legal* limitations of copyholds in the form of an estate tail would only be conditional fees. And a trust of copyholds can only be entailed where there is a custom to entail the legal estate (*f*).

Equitable
interests.

An equitable interest in copyholds may be assigned by deed (*g*), but it cannot be surrendered except for the purpose of barring an estate tail (*h*).

Leases of
copyholds.

Copyholds can only be leased by the copyholder for one year, or for any less period, without the licence of the lord, unless there is a custom in the manor enabling the tenant to lease for a longer period; and an actual lease without licence for any period not warranted by the custom of the manor would operate as a forfeiture. Such leases are, however, good and binding as between the parties, and also all other persons, except the lord, who may enter for a forfeiture; but such right of entry may be waived or destroyed by any act on the part of the lord which amounts to an acknowledgment of the title of the copyholder, or by the lord not enforcing his right for twelve years (*i*).

Forfeiture by
waste, &c.

Copyholds may also be forfeited by the tenant's

(*d*) Carter *v.* Sebright, 26 Beav. 374.

(*e*) Steele *v.* Waller, 28 Beav. 466. See Garland *v.* Mead, L. R. 6 Q. B. 441.

(*f*) Lewin's Trusts, p. 46.

(*g*) 1 Scri. Cop. 262; King *v.* Lord of Manor of Hendon, 2 Term Rep. 484.

(*h*) 3 & 4 Wm. 4, c. 74, sec. 50.

(*i*) See Scri. Cop. 5th ed. pp. 66, 326; 2 Watk. Cop. p. 30, note 37 & 38 Vict. c. 57.

voluntary or permissive waste, such as pulling down houses, cutting down trees, digging for mines, failing to keep the property in good repair, or any other act or omission whereby the property should become deteriorated. A forfeiture may also be incurred by neglect to attend the customary court after being summoned, or by a refusal to pay the fine when certain or reasonable, or the customary rent when demanded, or by the tenant wilfully withholding his services, &c. (*k*). Equity, however, will in certain cases relieve against a forfeiture (*l*), though not against a voluntary act, nor unless a compensation can be made to the lord (*m*).

The widow of a copyholder is not dowable except by custom. Customary dower is usually called free bench, and depends upon the custom of the particular manor. It is generally limited to the lands of which the husband *dies* seised, but sometimes it extends to all the lands of which he is seised at any time during the coverture. In most manors the widow's right to free bench is confined to one-third of the land, sometimes it extends to some other part, and sometimes to the whole. It is generally for the life of the widow, but sometimes during widowhood only (*n*).

A widow is not entitled to free bench out of a *trust* of copyholds (*o*), nor out of copyholds of which her husband is surrenderee, but dies before admittance (*p*). And free bench may generally be defeated by the alienation of the husband by an act *inter vivos*, or even by his contract for sale (*q*), or by the surrender of the husband, although the admittance of the surrenderee may not take place until after the husband's death (*r*).

When a testator has in view an immediate conversion of his copyhold lands, it is usual, instead of devising them to trustees upon trust for sale, to direct or

Free bench.

No free bench out of a trust.

Testamentary directions to sell, and scheme for saving double fine.

(*k*) Scri. Cop. 434 *et seq.*; 1 Watk. Cop. 398 *et seq.*

(*l*) See *Andrews v. Hulse*, 4 K. & J. 392.

(*m*) 1 Watk. Cop. 422.

(*n*) Scri. Cop. 72, 73.

(*o*) Scri. Cop. 75.

(*p*) *Smith v. Adams*, 5 De G. M. & G. 712.

(*q*) Scri. Cop. 74.

(*r*) *Ibid.* 90.

authorise the trustees to sell them, in order to save the necessity of a double admittance and a double fine, for, in the event of the property being sold under such a direction, the purchaser is entitled to be admitted on the payment of a single fine (*s*).

Power of lord
with limited
interest.

The lord, however limited his interest may be, can accept surrenders and make grants of copyholds held of the manor as fully as if he were seised of the manor in fee, and if, after having accepted a surrender, his interest should determine before admittance, his successor would be compelled to admit the surrenderee (*t*).

Enfranchise-
ment of copy-
holds.

The tenure of copyholds may be changed, so as entirely to alter their character by the lord's enfranchisement; but in order to make an absolute enfranchisement, except under the special powers conferred by the Copyhold Acts, the lord must have the whole freehold interest. The enfranchisement must be to the tenant; but it does not follow that the tenant must have the whole fee in himself, in order to accept an absolute enfranchisement. Although the copyholder may have only a partial interest in the premises, a conveyance to him by the lord of the whole fee simple would operate as an absolute enfranchisement, and would enure for the benefit of those in remainder as well as for that of himself (*u*).

Enfranchise-
ment of copy-
holds under
Acts.

Voluntary
enfranchise-
ments.

Several Acts have been passed from time to time to facilitate the enfranchisement of copyhold property; which Acts are known by the short title of the Copyhold Acts. The Copyhold Act, 1841 (*x*), provides for voluntary enfranchisements. It constitutes Commissioners to be called "The Copyhold Commissioners" (*y*) (now called the Land Commissioners (*z*)), and enables the lord of a manor, whatever may be his estate or interest therein, with the consent of the Commissioners, to enfranchise any lands, and any tenant, whatever may be his estate or interest, to accept such enfran-

(*s*) *Glass v. Richardson*, 2 De G. M. & G. 658. See also *Reg. v. Wilson*, 9 Jur. N. S. 439; *Garland v. Mead*, L. R. 6 Q. B. 441.
(*t*) *Scri. Cop.* 79, 5th ed.

(*u*) 1 Watk. Cop. 437, 438.
(*x*) 4 & 5 Vict. c. 35.
(*y*) Secs. 1—10.
(*z*) See 45 & 46 Vict. c. 38, s. 48.

chisement, subject to a provision requiring, in the case of any party to an enfranchisement having less than an absolute interest, the giving of certain notices to the other parties interested (*a*). A subsequent Act contains provisions for charging the expenses of enfranchisements on the lands or manor (*b*), and the Act of 1841 provides for the application of enfranchisement moneys where the lord has a limited interest only (*c*).

The Copyhold Acts, 1852, 1858, and 1887 (*d*), provide for *compulsory* enfranchisements. The following is a summary of their principal provisions:—

Compulsory enfranchisements.

1. The tenant or lord may at any time after admittance require and compel enfranchisement, but the tenant must first have paid or tendered the fine and fees due on such admittance (*e*). The consideration to be paid to the lord for the enfranchisement, unless the parties agree, is ascertained by valuation under the direction of the Land (formerly Copyhold) Commissioners (*f*).

Tenant or lord may require and compel enfranchisement.

2. On the admission of any tenant, the steward is bound to give him a notice informing him of his right to enfranchise (*g*).

Notice to be given to tenant of his right by steward.

3. After any enfranchisement any persons interested in the enfranchised land may inspect the court rolls (*h*), and when all the lands of a manor have been enfranchised, the court rolls are to be handed over to the Master of the Rolls, who is to allow them to be inspected by all persons interested (*i*).

Right of former tenant after enfranchisement to inspect court rolls.

4. Where the lord can show to the satisfaction of the Commissioners that any change in the condition of land proposed to be enfranchised, which might have been prevented by the incidents of copyhold tenure, would prejudicially affect in enjoyment or value the mansion house and grounds of the lord, the lord may offer to purchase the tenant's interest at a valuation,

In certain cases lord may elect to purchase tenant's interest instead of enfranchising.

(*a*) Act of 1841, sec. 56.
 (*b*) 21 & 22 Vict. c. 94, secs. 21 to 26.
 (*c*) Secs. 73—76.
 (*d*) 15 & 16 Vict. c. 51; 21 & 22 Vict. c. 94; 50 & 51 Vict. c. 73.

(*e*) Act of 1852, sec. 1.
 (*f*) Act of 1858, sec. 8; Act of 1887, sec. 3.
 (*g*) Act of 1887, sec. 1.
 (*h*) Act of 1852, sec. 20.
 (*i*) Act of 1887, sec. 48.

and if the tenant refuse, the land shall not be enfranchised (*k*).

Lord or tenant may compel extinguishment of manorial incidents.

5. Any lord or tenant or owner of any land liable to any heriot or any quit rent, or other manorial incident, may require and compel the extinguishment of such rights and incidents, and the provisions as to enfranchisement are made applicable to such an extinguishment (*l*).

Compensation, how to be paid.

6. A tenant may if he thinks fit pay the compensation in a gross sum before completion of the enfranchisement; but, subject to this power, the compensation will in the following cases, viz. (a) when the enfranchisement is effected at the instance of the lord; and (b) where the land can in the opinion of the Commissioners be sufficiently identified and the compensation amounts to more than one year's improved value, take the form of an annual rent-charge equal to interest at 4 per cent. upon the amount of compensation ascertained by the valuation (*m*). The rent-charge is redeemable (*n*).

Award of enfranchisement.

7. The enfranchisement is carried into effect by the Commissioners by an award of enfranchisement (*o*).

Enfranchisement not to affect commonable rights, or rights in mines, &c.

8. Commonable rights attached to land when copyhold will continue to attach thereto after enfranchisement (*p*), and an enfranchisement does not affect the estate or rights of any lord or tenant in mines, minerals, quarries, &c. (*q*); but the owner of enfranchised land may, notwithstanding the reservation of minerals, &c., to the lord, disturb or remove the soil for the purpose of making roads or drains, or erecting buildings, or obtaining water (*r*).

Acts do not apply to copyholds for lives or years where no right of renewal.

9. The Acts do not apply to copyholds for a life or lives, or for years, where there is no right of renewal (*s*).

New copyholds cannot be created without leave of Land Commissioners.

10. New copyholds cannot be created without the consent of the Land Commissioners (*t*).

(*k*) Act of 1852, sec. 25.

(*l*) Act of 1887, sec. 7.

(*m*) Act of 1887, secs. 13, 14.

(*n*) Sec. 17.

(*o*) Sec. 22.

(*p*) Act of 1852, sec. 45.

(*q*) Act of 1852, sec. 48.

(*r*) Act of 1858, sec. 14.

(*s*) Act of 1852, sec. 48.

(*t*) Act of 1887, sec. 6.

11. Expenses of enfranchisement are to be borne by the party requiring it (*u*), and the scale of the steward's compensation is fixed by a schedule to the Act of 1887. Expenses.

Customary freeholds are held according to the custom of the manor, but not at the will of the lord, and pass by surrender and admittance, or by deed and admittance, according to the custom, and in some manors they will pass by deed *or* surrender (*x*). Customary freeholds.

III. *The disabilities of certain persons in regard to the sale and purchase of land.*

By the common law husband and wife were regarded as one person (*y*), whence it followed that, with some exceptions which it is unnecessary to mention here, a married woman was under an absolute incapacity to do any act affecting property without her husband's concurrence; and as the joint acts of husband and wife were *prima facie* deemed to be the sole acts of the husband, and to be done by the wife under his control or compulsion, the common law did not permit a married woman to dispose of her lands, even with her husband's concurrence, otherwise than by fine, or matter of record, after being solely and secretly examined, in order to ascertain if her act was voluntary (*z*). The stat. 3 & 4 Will. 4, c. 74, abolishes fines, and substitutes for them a more simple mode of assurance. Married women.
3 & 4 Will. 4, c. 74.

Under that Act a married woman is enabled in every case, except that of being tenant in tail (for which provision is otherwise made), by deed to dispose of lands of any tenure, and money subject to be invested in the purchase of lands, and to dispose of, release, surrender, or extinguish any estate therein, which she alone, or she and her husband in her right, might have in any such lands or money, and to release and extinguish powers as if she were a *feme sole*, pro- Power of disposition over lands.

(*u*) Act of 1852, sec. 30.

(*x*) Scri. on Cop. 413, 5th ed.;

1 Watk. on Cop. p. 58, note.

(*y*) Co. Lit. 112; 1 Bl. Com. 442.

(*z*) 1 Bl. Com. 444.

vided her husband concurs in the deed, and the deed is duly acknowledged. The Act does not apply to an estate at law in copyholds in those cases in which any of the objects to be effected by the above clause could, previously to the Act, have been effected by her, with the concurrence of the husband, by surrender (*b*). But with this exception, it extends to every kind of interest in corporeal or incorporeal hereditaments, including the proceeds of the sale of real estate directed to be sold, whether the same be an interest in possession or reversionary (*c*), but not including a reversionary interest in a debt secured on mortgage of real estate (*d*).

Acknowledgments how to be made.

An acknowledgment by a married woman under the above-mentioned Act must be made before a judge of the Supreme Court, or a county court judge (*e*), or before a perpetual commissioner appointed by the Lord Chief Justice of England, or a special commissioner appointed by the Court in those cases where, by reason of residence beyond seas, or ill-health, or any other sufficient cause, she is prevented from making her acknowledgment in the ordinary way (*f*). The judge or commissioner before taking the acknowledgment must examine the woman separately from her husband to ascertain whether she freely and voluntarily consents thereto (*g*), and when the deed has been acknowledged, he must sign a memorandum, to be indorsed on or written at the foot or in the margin of the deed, stating the acknowledgment and the separate examination (*h*).

(*b*) 3 & 4 Wm. 4, c. 74, sec. 77.

(*c*) *Briggs v. Chamberlain*, 11 Hare, 69; *Tuer v. Turner*, 20 Beav. 560; *Williams v. Cooke*, 4 Giff. 343; *In re Durrant & Storer*, 18 Ch. D. 108; *In re Jakman's Trusts*, 23 Ch. D. 344.

(*d*) *In re Newton's Trusts*, 23 Ch. D. 181.

(*e*) 19 & 20 Vict. c. 108, sec. 73.

(*f*) 3 & 4 Wm. 4, c. 74, secs. 79—83. By the Conveyancing Act, 1882, sec. 7, one perpetual or special commissioner is substituted for two.

(*g*) Sec. 80.

(*h*) Sec. 84. The latter part of this section, and the whole of secs. 85—88 inclusive, are repealed by the Conveyancing Act, 1882, so that no certificate of acknowledgment in addition to the memorandum is now required. The form of the memorandum is prescribed by the new rules made in December, 1882, under the Fines and Recoveries Abolition Act, and section 7 of the Conveyancing Act, 1882, which are set out in the Appendix to this volume.

When the memorandum of acknowledgment purports to be signed by a person authorized to take the acknowledgment, the deed, as regards the execution by the married woman, takes effect at the time of acknowledgment, and will be conclusively deemed to have been duly acknowledged (*i*). Memorandum of acknowledgment.

By the Conveyancing Act, 1882 (*k*), it is provided that an acknowledged deed shall not be impeachable by reason only that the judge or commissioner was interested or concerned either as a party, or as solicitor, or as clerk to the solicitor for one of the parties or otherwise in the transaction; and that General Rules should be made for preventing any person interested or concerned as aforesaid from taking an acknowledgment (*l*), but so that no such rule should make invalid any acknowledgment. Acknowledgment not impeachable because judge or commissioner is interested.

The Married Women's Property Act, 1882 (*m*), which will be presently more particularly mentioned, renders acknowledgment unnecessary as regards property to which it applies, but in all other cases the provisions of the Act 3 & 4 Will. 4, c. 74, above referred to, remain in force. Married Women's Property Act, 1882.

Where a married woman is seised *at law* of an estate in copyholds, not being property subject to the Married Women's Property Act, 1882, she and her husband must pass the estate by a surrender, on her being separately examined; but if the estate is equitable, the assurance can be either by surrender, or by a deed acknowledged by her as in the case of freeholds (*n*). As to copyholds of a married woman not subject to the Act.

A power of appointment over land given to a married woman, or to a woman who afterwards marries, can be exercised by her by an unacknowledged deed without the concurrence of her husband (*o*). Power to married woman, or who afterwards marries.

With regard to the chattels real of a married woman, not being property subject to the Married Women's Chattels real of a married woman not subject to Act.

(*i*) Conveyancing Act, 1882, sec. 7.

(*k*) Sec. 7.

(*l*) See, accordingly, the first of the new rules referred to in note (*h*), p. 186.

(*m*) 45 & 46 Vict. c. 75.

(*n*) 3 & 4 Wm. 4, c. 74, secs. 77, 90.

(*o*) 1 Sug. Pow. 182, 7th ed.

Property Act, 1882, the husband may, without his wife's concurrence, dispose of them by act *inter vivos*, but not by will (*p*); but if he does not exercise such power they pass upon the death of either husband or wife to the survivor, and it is not necessary to take out administration (*q*). This power of the husband over his wife's chattels real extends to reversionary and contingent interests, unless the interest is of such a nature that it cannot by possibility vest in the wife in possession during the coverture (*s*). If the wife's interest in her chattels real is only equitable, she must concur in and acknowledge the deed of disposition in order to bar her equity to a settlement (*t*).

Separate use

Equity has always recognized the separate existence of a married woman, and permitted her to deal with property limited to her separate use, as if she were a *feme sole*. Whenever, therefore, real or personal property stands limited to a trustee in trust for the separate use of a married woman, she may, in equity, dispose of her beneficial interest by deed unacknowledged, or by her will, without her husband's concurrence; and the trustee in whom the legal estate is vested is bound to convey it by her direction. And if the land has been so limited as to give to the wife the legal estate as well as the separate beneficial interest, it is apprehended that upon a sale by her, she will, after the receipt of the purchase-money, be a bare trustee for the purchaser within the meaning of the 6th section of the Vendor and Purchaser Act, 1874, and be able to convey the legal estate accordingly (*u*).

Married
Women's
Property Act,
1870.

The Married Women's Property Act, 1870, gave to a woman marrying after the 8th August, 1870, the right to hold for her separate use (besides certain kinds of personal property) the rents and profits of any freehold, copyhold, or customaryhold property descending

(*p*) *Bracebridge v. Cook*, Plowd. 417. And a voluntary assignment or settlement by the husband of the wife's chattels real will prevail against the wife surviving (*Doe v. Lewis*, 11 Com. B. 1035; *Donne v. Hart*, 2 R. & M. 360).

(*q*) *Elder v. Pearson*, 25 Ch. D. 620.

(*s*) *Duberley v. Day*, 16 Beav. 33.

(*t*) *Hanson v. Keating*, 4 Hare, 1.

(*u*) *Docwra v. Firth*, 29 Ch. D. 693.

upon her after marriage as heiress or co-heiress of an intestate. This Act is repealed as from the 31st December, 1882, except as to rights acquired thereunder.

The legal disability of married women as regards property is now entirely removed by the Married Women's Property Act, 1882 (x). By that Act it is provided that every woman who marries after the 31st of December, 1882, shall be entitled to have and to hold as her separate property, and to dispose of by will or otherwise in the same manner as if she were a *feme sole*, all real and personal property which shall belong to her at the time of marriage, or shall be acquired by or devolve upon her after marriage, including any wages, earnings, money, and property gained or acquired by her in any employment, trade, or occupation in which she is engaged, or which she carries on separately from her husband, or by the exercise of any literary, artistic, or scientific skill (y); and that every woman married before the 1st of January, 1883, shall be entitled to have and to hold, and to dispose of in manner aforesaid as her separate property, all real and personal property, her title to which, whether vested or contingent, and whether in possession, reversion, or remainder, shall accrue after the 31st of December, 1882, including any wages, earnings, money, and property so gained or acquired by her as aforesaid (z).

Provisions of
Married
Women's
Property Act,
1882.

Since these statutory provisions confer on a married woman, as fully as if she were a *feme sole*, a legal as well as an equitable title and right of disposition with regard to all property which they embrace, it follows that she can dispose of all real property which comes within their operation if freehold or leasehold, as well at law as in equity, by an unacknowledged deed without the concurrence of her husband, or by her will, and if copyhold by surrender without her husband's concurrence or any separate examination (a), or by her will. If she has only an equitable estate

Married
woman's
powers of dis-
position under
Act.

(x) 45 & 46 Vict. c. 75.

(y) Sec. 2.

(z) Sec. 5.

(a) As to the husband's title to curtesy in his wife's freeholds of

inheritance limited to her separate use or being her separate property under the Married Women's Property Act, 1882, see Vol. II. Dissertation on Husband and Wife.

The devolution
of her property
in case of in-
testacy.

in copyholds, they will pass either by surrender or by her unacknowledged deed. If she dies intestate the quality of separate use ceases on her death, and her property devolves just as if the separate use had never existed. Thus, the husband takes an estate by the curtesy in freeholds if there has been issue of the marriage, and he becomes entitled absolutely to her personal estate, as regards chattels real and personalty in possession in his own right, and as regards choses in action upon taking out administration to her personal effects (b).

Infants.

An infant under the age of twenty-one years cannot enter into a binding contract for the sale or purchase of an estate, and he cannot sustain a suit for the specific performance of such a contract during his infancy (c). Such a contract is voidable by the infant, and on his attaining his majority, he may either avoid or affirm it as he thinks proper; and if he dies under age, his representatives have the like privilege (d). If, however, an infant contracts for the purchase of an estate, and pays a deposit, and afterwards, on his attaining twenty-one, refuses to complete the purchase, he cannot recover back the deposit, unless the vendor practised fraud in procuring its payment (e).

Lunatics.

It may be stated, in general terms, that an infant would not be entitled to take advantage of his own fraud (f).

Lunatics are incapacitated from disposing of their property, and their acts are absolutely void; but an executed contract, entered into *bonâ fide* and in the ordinary course of business, is not void by reason of one of the parties having been at the time of such contract of unsound mind, where such unsoundness is not known to the other party. Therefore, where a

(b) See *Molone v. Kennedy*, 10 Sim. 254; *In re Lambert's Estate*, 39 C. D. 626.

(c) *Flight v. Bolland*, 4 Russ. 298.

(d) 4 Bac. Abr. 360; *Clayton v. Ashdown*, 9 Vin. Abr. 393, pl. 1; Dart, 19.

(e) Sug. V. & P. 175; see also *Ex parte Taylor*, 8 De G. M. & G. 257. This is in accordance with the settled doctrine, that an infant who

pays money without a valuable consideration, cannot recover it back again. (See *Ex parte Taylor*, 8 D. M. & G. 257; *Holmes v. Blogg*, 8 Taunt. 508.)

(f) 4 Bro. C. C. 507, n.; *Overton v. Banister*, 3 Hare, 503; *Wright v. Snowe*, 2 De Gex & Sm. 321; *In re King*, 3 De G. & J. 63; and see *Nelson v. Stocker*, 4 De G. & J. 458.

lunatic purchased certain annuities for his life of a society which had at the time no knowledge of his unsoundness of mind, the transaction being fair and *bonâ fide* on the part of the society, it was held that after the death of the lunatic his personal representatives could not recover back the premiums paid for the annuities (*g*). If a vendor becomes lunatic subsequently to the contract, the Lord Chancellor is empowered to order that it shall be carried into effect (*h*).

Persons acting in a fiduciary character, such as Trustees, &c. trustees, agents, secretaries of societies, committees of lunatics, executors, the trustee of a bankrupt, &c., are unable to purchase the property which they are entrusted or empowered to sell, and the same rule would apply to a mortgagee with a power of sale, or to persons selling, not in virtue of their own beneficial estate, but under a discretionary power for the benefit of others; but this rule does not apply to a purchase by a mortgagee from a mortgagor, or by a mere *dry* trustee from his *cestui que trust* (*i*), or to a sale by a mortgagee to a company of which he is a member (*j*). Although a trustee cannot buy from himself, he may purchase from the *cestui que trust* if the relation of trustee and *cestui que trust* is previously dissolved, or, if not dissolved, by the parties agreeing to stand with reference to each other in the characters of purchaser and vendor (*k*).

If a parent purchases from his child, or a guardian from his ward who has only lately come of age, or a solicitor, or agent, or other person in a confidential relation from his client, the sale is not necessarily void, but in all such cases the Court very jealously examines

Solicitors and others standing in a confidential relation.

(*g*) *Molton v. Camroux*, 4 Exch. 17. See also *Elliott v. Tuam*, 7 De G. M. & G. 475, 478. As to sales, mortgages, and leases by the committee of a lunatic under an order of the Lord Chancellor, see 16 & 17 Vict. c. 70, ss. 113, 114, 115, 116, 124, 125. See also *In re Weld*, 28 Ch. D. 514; *In re Harwood*, 35 Ch. D. 470. Under the 18 & 19 Vict. c. 13, committees are empowered, under an order of the Lord Chancellor, to grant leases of the entailed lands of the lunatic

as therein mentioned.

(*h*) 16 & 17 Vict. c. 70, s. 122.

(*i*) *Parkes v. White*, 11 Ves. 226; *Knight v. Majoribanks*, 2 Mac. & Gor. 10; *Martinson v. Clowes*, 21 Ch. D. 857.

(*j*) *Farrar v. Farrar (Limited)*, W. N. 1888, p. 252.

(*k*) *Gibson v. Jeyes*, 6 Ves. 277; *Ex parte Lacey*, 6 Ves. 626; *Montesquieu v. Sandys*, 18 Ves. 302; *Coles v. Trecothick*, 9 Ves. 247; see also *Harrison v. Guest*, 6 De G. M. & G. 424; on appeal, 8 H. L. Cas. 481.

into the fairness of the transaction, and it rests with the purchaser to prove it, and that the consideration is adequate (*k*); and in a case, where the vendor's legal agent purchased, nominally for another, but really for himself, the mere concealment of the fact that he was the real purchaser was held sufficient to vitiate the sale, even if fair in other respects (*l*). But proceedings to set aside a sale on the ground of confidential relation between the parties ought to be instituted within a reasonable time (*m*). If the sale is set aside, the purchaser is of course entitled to have back his purchase-money; but in a case where the purchaser was a solicitor, it was held that he must prove its payment by more conclusive evidence than the acknowledgment in the deed and a memorandum endorsed upon it (*n*).

As to gifts to
to solicitors.

A gift *inter vivos* from a client to his solicitor, made pending that relation, cannot be sustained (*o*), and the same rule applies to other confidential relations. But if the donor intentionally abides by the gift after the confidential relation has ended, it cannot be impeached after his death (*p*). Nor does this rule apply to a gift *by will*, because it is the province of the Court of Probate to determine the question of fraud or undue influence as affecting any particular bequest, and if a will is once admitted to probate, a court of equity could only interfere by fixing a trust on the legacy in question, which it would not do merely because of the existence of the relation of solicitor and client (*q*).

Aliens.

Prior to the "Naturalization Act, 1870" (*r*), an alien might purchase, but on office found the land went to the Crown (*s*). And where lands were devised to a trustee for an alien, the trust was executed for the

(*k*) *Edwards v. Meyrick*, 2 Hare, 63; *Jones v. Thomas*, 2 Y. & C. Exch. 498; *Holman v. Loynes*, 23 L. J. Ch. 529; *King v. Savery*, 1 Sm. & Giff. 271; *Savery v. King*, 5 H. L. Ca. 627; *Gresley v. Mousley*, 1 Giff. 450; *Pearson v. Benson*, 28 Beav. 598; *Gibbs v. Daniel*, 4 Giff. 1; *Dalby v. Wonham*, 33 Beav. 154.
(*l*) *McPherson v. Wall*, 3 App. Ca. 254.

(*m*) *Marquis of Clanricarde v. Heming*, 30 Beav. 175.

(*n*) *Gresley v. Mousley*, 3 De G. F. & J. 433.

(*o*) *Hatch v. Hatch*, 9 Ves. 292; *Billage v. Southes*, 9 Hare, 534; *Tomson v. Judge*, 3 Drew. 306; *Morgan v. Minett*, 6 C. D. 638.

(*p*) *Mitchell v. Homfray*, 8 Q. B. D. 587.

(*q*) *Hindon v. Weatherill*, 5 D. M. & G. 301. See also *Walker v. Smith*, 29 Beav. 394.

(*r*) 33 Vict. c. 14.

(*s*) Co. Litt. 2 b.

benefit of the Crown (*t*). But by the second section of the last-mentioned Act, it is provided that real and personal property of every description may be taken, acquired, held, and disposed of by an alien in the same manner in all respects as by a natural-born subject; and a title to real and personal property of every description may be derived through, from, or in succession to an alien in the same manner in all respects as through, from, or in succession to a natural-born British subject; but it is provided that this section shall not confer any right on an alien to hold real property situate out of the United Kingdom, and shall not qualify an alien for any office, or for any municipal, parliamentary, or other franchise, nor entitle him to any right or privilege as a British subject, except such rights and privileges in respect of property as are by the Act expressly given to him, nor affect any estate or interest in real or personal property to which any person has or may become entitled mediately or immediately, in possession or expectancy, in pursuance of any disposition made before the passing of the Act, or in pursuance of any devolution by law on the death of any person dying before the passing of the Act.

Capacity of an alien as to property.

The 7th and 8th sections of this Act deal with the subject of applications for certificates of naturalization and re-admission to British nationality. The 10th section contains the following enactments with respect to the national status of women and children:—1. A married woman shall be deemed to be a subject of the State of which her husband is for the time being a subject. 2. A widow being a natural-born British subject, who has become an alien by or in consequence of her marriage, shall be deemed to be a statutory alien, and may, as such, at any time during widowhood, obtain a certificate of re-admission to British nationality in manner provided by the Act. 3. Where the father being a British subject, or the mother being a British subject and a widow, becomes an alien in

National status of married women and infant children.

(*t*) *Barrow v. Wadkin*, 24 Beav. 1, held otherwise in *Rittson v. Sturdy*, dissenting from *V.-C. Stuart*, who 3 Sm. & Giff. 230.

pursuance of the Act, every child of such father or mother who, during infancy, has become resident in the country where the father or mother is naturalized, and has, according to the laws of such country, become naturalized therein, shall be deemed to be a subject of the State of which his father or mother has become a subject, and not a British subject. 4. Where the father, or the mother being a widow, has obtained a certificate of re-admission to British nationality, every child of such father or mother who, during infancy, has become resident in the British dominions with such father or mother, shall be deemed to have resumed the position of a British subject to all intents. 5. Where the father, or the mother being a widow, has obtained a certificate of naturalization in the United Kingdom, every child of such father or mother who, during infancy, has become resident with such father or mother in any part of the United Kingdom, shall be deemed to be a naturalized British subject.

Traitors and felons.

Prior to the 33 & 34 Vict. c. 23, traitors and felons could *bonâ fide* sell chattels real and personal for the maintenance of themselves or families, or alien the same *bonâ fide* for value any time before their conviction (*u*); but a colourable alienation of goods by a person under charge of felony for the purpose of avoiding a forfeiture, was fraudulent and void against the Crown (*x*). So also a voluntary settlement of personal estate after the commission of felony in favour of a wife and children was void against the Crown in the event of a conviction (*y*). As to lands of inheritance, however, the attainder both in respect of escheat and forfeiture had relation to the time of the offence committed, so as to avoid any conveyance or alienation of lands, although to a purchaser for value without notice, between the commission and the conviction (*z*). Where real estate was vested in trustees, and the *cestui que trust* committed felony, the trustees held the lands discharged

(*u*) 8 Co. 171. See Mainpiece v. Reason, W. N. 1877, p. 161.

(*x*) 8 Co. 171; 3 Bac. Abr. 732; Perkins v. Bradley, 1 Hare, 219.

(*y*) *Re Saunders' Estate*, 4 Giff. 179.

(*z*) Co Litt. 13 b; 4 Jar. Con. by Sweet, 75; Tudor's R. Pro. 641.

from the trust (a); whilst the conviction of a person for treason or felony occasioned a forfeiture of his personal estate to the Crown, although it might be vested in trustees.

The law, however, as to the property of traitors and felons has been materially altered by the 33 & 34 Vict. c. 23, which enacts that from and after the 4th July, 1870, no confession, verdict, inquest, conviction or judgment, of or for any treason or felony, shall cause any attainder or corruption of blood, or any forfeiture or escheat (b). The 9th section provides for the appointment of an administrator of the convict's property; and by the 10th section it is provided that upon the appointment of the administrator under the last section all the real and personal property, including choses in action, to which the convict was at the time of his conviction, or shall afterwards, while he shall continue subject to the operation of the Act, become or be entitled, shall vest in such administrator for all the estate and interest of such convict therein.

Forfeiture, &c., abolished.

Convict's property to vest in administrator on his appointment.

The 12th section gives the administrator power to let, mortgage, sell, convey, and transfer any part of the convict's property; and the 13th and four following sections contain provisions enabling the administrator to make payments, compensations, and allowances out of such property. The 18th section then declares that, subject to the powers and provisions thereinbefore contained, all such property, and the income thereof, shall be preserved and held in trust by

Power of administrator.

Property to be preserved for convict, and to revert to him or his representatives on completion of

(a) *Burgess v. Wheate*, 1 Eden, 117; *Taylor v. Haygarth*, 14 Sim. 8.

* Where real estate was vested in trustees, and the *cestui que trust* died without heirs, the equitable estate did not escheat to the Crown, but the trustees held the lands discharged from the trust. (*Burgess v. Wheate*, *ubi supra*.) So where real estate was subject to a legal mortgage in fee, and the mortgagor died without heirs, the equity of redemption did not escheat to the Crown, but, subject to its being assets in an administration suit for the payment of the mort-

gagor's debts, belonged to the mortgagee. (*Beale v. Symonds*, 16 Beav. 406.) But now where a person dies without an heir and intestate in respect of any real estate, consisting of any estate or interest, whether legal or equitable, in any incorporeal hereditament, or of any equitable estate or interest in any corporeal hereditament, the law of escheat will apply in the same manner as if the estate or interest were a legal estate. See 47 & 48 Vict. c. 71.

(b) Sect. 1.

* Where owner dies without heir and intestate.

sentence,
pardon, or
death.

the administrator, and the income thereof may, if and when the administrator shall think proper, be invested and accumulated in such securities as he shall from time to time think fit, for the use and benefit of the convict and his heirs or legal personal representatives, or of such other persons as may be lawfully entitled thereto according to the nature thereof, and the same, and the possession, administration, and management thereof, shall vest in and be restored to such convict upon his ceasing to be subject to the operation of the Act or in or to his heirs or legal personal representatives, or such other person as may be lawfully entitled thereto.

Interim
curators.

The same Act provides for the appointment of interim curators by justices of the peace in cases where an administrator is not appointed (c).

Corporations.

Corporations are not allowed to hold land except by licence from the Crown, or under special statutory powers (d). By the Companies Act, 1862 (e), every company registered under that Act may hold lands (f); but no company formed for the purpose of promoting art, science, religion, charity, or any other like object, not involving the acquisition of gain by the company or the individual members thereof, can, without the sanction of the Board of Trade, hold more than two acres (g).

Conveyances
of land for
charitable
purposes.

Conveyances of land for charitable purposes are subject to statutory restrictions, which will be considered under the head of "Charity Deeds" in Vol. 2.

IV. *The form and ordinary parts of a deed of conveyance, and matters relating to the conveyance; what covenants run with land, restrictive covenants, and other matters.*

Ordinary parts
of a deed of
conveyance.

The ordinary parts of a purchase deed are the names and descriptions of the parties, the recitals, the operative part (including the consideration and the habendum), and the covenants, if any are required.

(c) See sects. 21—26.
(d) See Mortmain and Charitable
Uses Act, 1888 (51 Vict. c. 42),
Part I.

(e) 25 & 26 Vict. c. 89.
(f) Sect. 18.
(g) Sect. 21.

The *recitals* in a purchase deed should be as few and simple as possible. If the vendor is seised in fee it is unnecessary to recite the conveyance to himself, but if the property was conveyed to him to uses to bar dower, it is usual to recite it. So also if the vendor is a trustee for sale, the instrument by which the trust is created should be recited, and it should also be shown by the recitals that the vendor has made the sale in accordance with the trust; but where the trust authorises a sale either by private contract or public auction, and the property has been sold by auction, the deed of conveyance need not refer to such auction, but may either recite generally that the vendor has agreed for the sale, or may contain no recital at all. The recitals (if any) which a purchase deed should contain must depend on the particular circumstances of each case, and it is sufficient to have given a few leading illustrations in exemplification of the general principle to be followed.

Should the property be subject to incumbrances which are to be discharged, the purchase deed should explicitly recite the nature and extent of these charges, and the documents should be recited so far as to show the actual condition of the title at the date of the purchase; and it may be stated in general terms that no person should be made a party without its appearing for what purpose he joins in the deed.

A vendor who is beneficial owner is bound to covenant for title as to his own acts and the acts of all persons through whom he derives title otherwise than as purchaser for value, and if a person conveys and is expressed to convey as beneficial owner covenants for title by him will now be implied by virtue of the Conveyancing Act, 1881 (*h*).

A vendor who is not beneficial owner is not bound to enter into any other covenant than that he has done no act to incumber the property, and a covenant to this effect extending to his own acts only will now be implied when the vendor conveys and is expressed

Recitals.

When there are incumbrances to be discharged.

Covenants for title by vendor who is beneficial owner.

These covenants are now implied by vendor who conveys as beneficial owner.

Vendors who are not beneficial owners, only covenant against incumbrances.

(*h*) Sect. 7. The Act is set out verbatim in the Appendix.

These covenants are now implied if vendor conveys as trustee, mortgagee, &c. Covenants on sale by trustees.

to convey as trustee or mortgagee, or as personal representative of a deceased person or as committee of a lunatic so found by inquisition or under an order of the Court (*i*).

When, under a will, trustees are directed to sell for the payment of debts or for other purposes, and the purchase-money or the residue of the purchase-money (after discharging debts, or satisfying any other purposes for which the sale is to be made) is to be divided among persons who are *sui juris*, it used to be the practice of the profession to make the *cestuis que trust* parties, in order to covenant for title with reference to their respective interests (*j*); but this practice has not been adopted by the Court in sales under its decree (*k*), and it is doubtful whether in any case where trustees are empowered to give receipts (and they have this power now by statute) a purchaser can insist on the concurrence of the beneficiaries in order to have their express or implied covenants for title (*l*). If it were held that the *cestuis que trust* who are *sui juris* must concur for this purpose, their refusal to do so might render it impossible for the trustees to perform the duty imposed upon them; and yet it seems to be clear that the purchaser has bought, with the estate, only the right to such covenants as can be obtained from the vendors, who are the trustees and not the persons beneficially interested in the purchase-money (*m*).

Covenants by tenant for life.

Where a power of sale is exercised with the consent of the tenant for life, the purchaser is entitled to covenants for title from him (*n*); but Mr. Dart submits that although a tenant for life or other owner of a particular estate may be required to covenant in respect of his own beneficial interest, he cannot be required to covenant for title as respects the reversion beyond his own

(*i*) Sect. 7 (F.).

(*j*) Dart, p. 617, 6th edition; Cottrell v. Cottrell, L. R. 2 Eq. 330.

(*k*) Sug. V. & P. 464.

(*l*) Dart, p. 617, 6th edition.

(*m*) Dart, p. 618, 6th edition.

(*n*) Sug. V. & P. 464. *In re London Bridge Acts*, 13 Sim. 176; *Earl of Powlett v. Hood*, L. R. 5 Eq. 115.

See also *In re Sawyer & Baring's Contract*, W. N. 1884, p. 192, which decided, that notwithstanding the contract stipulated that the trustees should only be required to give the statutory covenant against incumbrances, a tenant for life must enter into covenants for title.

acts and the acts of persons claiming under him (o), and the practice has been in accordance with this opinion.

On a sale by the husband and wife of the wife's estate, not being her separate property by statute or otherwise, the husband must covenant for title as if the estate were his own; and by the 7th section of the Conveyancing Act, 1881, sub-section 3, it is provided that "where a wife conveys, and is expressed to convey as beneficial owner, and the husband also conveys, and is expressed to convey, as beneficial owner, then within this section the wife shall be deemed to convey and to be expressed to convey by the direction of the husband as beneficial owner; and in addition to the covenant implied on the part of the wife, there shall also be implied first a covenant on the part of the husband as the person giving that direction, and secondly a covenant on the part of the husband in the same terms as the covenant implied on the part of the wife."

Covenants by husband on sale of wife's estate. Provisions of recent Act.

Under the usual covenants for title the purchaser, in case of eviction, may recover the value of the land and also of houses which he had built thereon subsequently to his purchase (p).

What may be recovered under covenants for title.

Covenants running with land, and restrictive covenants.

Covenants relating to land, if entered into with a person having an estate therein, are said to run with the land, *i.e.*, the benefit of them passes to every successive transferee of the land, provided that he is in of the same estate as the original covenantee (q). Covenants for title, and covenants to indemnify land against charges on it, are instances of covenants of this kind. And it is not necessary in order to make a covenant run with the land that the word "assigns" or even (since the Conveyancing Act, 1881(r)) "heirs" be used.

When covenants run with the land.

The benefit of a covenant will not run with a rent-charge. Therefore, if A. grants a rent-charge issuing

Covenant will not run with rent-charge.

(o) Dart, p. 619, 6th edition.

(p) *Binney v. Hopkinson*, 27 Beav.

566.

(q) *Spencer's Case*, 1 Smith's L.

C. 22.

(r) Sect. 58.

out of his land to B., and covenants with B., his heirs and assigns, to pay it, the assign of B. will have his remedy by distress and entry on the land, but cannot sue A. personally on the covenant (*s*).

If lands are conveyed to uses, covenants in order to run with the land should be entered into with the grantee to uses (*t*).

Burthen of covenant will not run at law except as between landlord and tenant;

Whether the burden of a covenant entered into by the owner of land can be made to run with it at law, so as to be enforceable against an assign of the covenantor, has been much discussed. The better opinion seems to be that it cannot, except in cases of landlord and tenant, or where the so-called covenant is in fact the grant of an easement (*u*).

Equity will not interfere to enforce a covenant which cannot be sued on at law, unless it comes within the class of what are called restrictive or negative covenants, and in particular will not enforce against an assignee of the covenantor, a covenant to build, or repair, or insure, or do any act involving the expenditure of money (*x*).

nor in equity except where the covenants are restrictive or negative.

But as regards restrictive or negative covenants, *e.g.*, covenants not to build on land, or use it only in a particular manner, equity will interfere by injunction against the original covenantor, or any person claiming under him, either as a volunteer or as purchaser for valuable consideration with notice of the covenant, to restrain him from doing any act which would be a breach of the covenant (*y*); and he cannot

(*s*) *Milne v. Branch*, 5 M. & S. 417.

(*t*) *Roach v. Wadham*, 6 East, 289. In this case the question was as to the burden of a covenant, but the principle applies to the benefit also.

(*u*) *Ansterbury v. Corp. of Oldham*, 29 C. D. 750. *Cooke v. Chillcott*, 3 Ch. D. 694, may be considered as overruled, so far as it appears to be an authority for the contrary doctrine. In *Roach v. Wadham*, *ubi supra*, the question was not determined.

(*x*) *Haywood v. Brunswick, &c. Co.*, 8 Q. B. D. 403; *London and South Western Rail. Co. v. Gomm*, 20 Ch. D. 586.

(*y*) *Mann v. Stephens*, 15 Sim. 377; *Tulk v. Moxhay*, 2 Phil. 774; 11 Beav. 571; *Coles v. Sims*, 5 De Gex, M. & G. 1. In *Catt v. Tourle*, 4 Ch. 654, it was held, that a covenant entered into by a purchaser in fee with his vendor, that the latter should have the exclusive right of supplying beer to any public-house erected on the purchased land, though in terms positive, was in substance negative, and that the Court would interfere by injunction to restrain an assignee of the covenantor from acting in contravention of it. This decision goes beyond the other authorities, which seem to confine the doctrine to covenants re-

protect himself on the ground of want of notice by not investigating the title when the proper investigation of it would have disclosed the restrictive covenant (*z*).

Restrictive covenants are generally intended to prevent some adjoining land belonging to the covenantee from being depreciated by the acts prohibited. If the covenantee afterwards conveys to another the whole or part of the adjoining land, the benefit of the covenant will pass in equity to the grantee if it appears from the deed, or can be inferred from the circumstances, that it was the intention of the parties that it should so pass, but not otherwise (*a*). And such an intention will more readily be presumed where the sale comprises the whole of the land than where it comprises a part only (*b*).

Restrictive
covenants by
purchaser.

Where there is a building scheme for the sale of an estate in lots according to some defined plan, and it is part of the arrangement that the purchasers shall enter into restrictive covenants for their mutual benefit, in such case the covenants, though expressed to be entered into with the vendor only, will be mutually enforceable in equity by and against all persons who come in as purchasers under the scheme; and that is so, although some of the lots are unsold at the first sale, and are afterwards sold subject to the same conditions (*c*).

Where there
is building
scheme.

But whether the covenants are intended for the

lating to the use and enjoyment of the land. See the observations of Lord Selborne in *Earl of Zetland v. Hislop*, 7 App. Ca. 447.

(*z*) *Wilson v. Hart*, L. R. 1 Ch. 463; *Nicoll v. Fenning*, 19 Ch. D. 258.

(*a*) *Renals v. Cowlshaw*, 9 C. D. 125; 11 C. D. 866; *Master v. Hansard*, 4 C. D. 718. In *Renals v. Cowlshaw*, L. J. James is reported to have said, that "to enable an assignee to take the benefit of a restrictive covenant, there must be something in the deed to define the property for the benefit of which they were entered into. Notwithstanding this dictum, it is appre-

hended that if the deed is silent on the point, extrinsic evidence would be admissible to show that the covenantee was, in fact, the owner of certain adjoining lands, from which the Court or jury might infer that the covenants were entered into for the benefit of that land.

(*b*) *Keats v. Lyon*, 4 Ch. 218; and the observations in that case on *Child v. Douglas*, Kay, 560.

(*c*) *Whatman v. Gibson*, 9 Sim. 196; *Coles v. Sims*, Kay, 56; *Western v. McDermot*, 1 Eq. 499; 2 Ch. 72; *Jay v. Richardson*, 30 Beav. 563; *Nicoll v. Fenning*, 19 C. D. 258; *Collins v. Castle*, 36 Ch. D. 243.

Question discussed whether covenants are intended for mutual benefit of purchasers and vendor, or for vendor only.

mutual benefit of the purchasers, or for the benefit and protection of the vendor only, is always a question of fact depending on the language of the deed or the conditions of sale, or the other circumstances, and, in the absence of any express statement on the point, will depend mainly on whether the sale comprises the whole of the vendor's estate in the particular place. If it does, the presumption would be that the covenants are intended for the benefit of each of the purchasers as against the others. If, on the other hand, a part of the property is retained by the vendor, the *prima facie* inference would be that the covenants are for the protection of himself in respect of the retained land (*d*).

The proper plan to be pursued to prevent all question.

In order to prevent all question it is desirable, where it is intended that covenants of this kind shall be enforceable not only by the vendor, but by all the purchasers, *inter se*, either to have a general deed containing such covenants executed by the vendor and by each purchaser as he completes (*e*), or to insert in the conveyance to each purchaser not only covenants by him with the vendor, but also a declaration that he shall be entitled to the benefit of the similar covenants entered into by the other purchasers, and that as regards any lots not already sold and conveyed, the same shall be subject to the like restrictions.

Notice of restrictive covenants by vendor should be indorsed on his title deed.

Where a vendor enters into restrictive covenants with intent to bind all future owners of the land affected thereby, the purchaser should see that notice of the deed containing the covenants is indorsed on some principal title deed retained by the vendor, so that subsequent purchasers from the vendor will have notice of them.

Equity will not interfere when there has been delay amounting to acquiescence.

Equity will refuse to interfere to prevent a breach of restrictive covenants where there is such delay on the part of the covenantee in taking proceedings as to amount to acquiescence (*f*).

(*d*) Nottingham, &c. Company v. Butler, 15 Q. B. 261; 16 Q. B. 778; Collins v. Castle, *ubi supra*. See also Sheppard v. Gilmore, 57 Law Jour. Ch. p. 6.

(*e*) Whatman v. Gibson, 9 Sim. 196.

(*f*) Duke of Bedford v. British Museum, 2 M. & R. 552; Sayers v. Collyer, 28 C. D. 103.

As between landlord and tenant, covenants relating to the thing demised run with the land at law both as to the burden and the benefit. But not so if the covenant relates to property not demised. Thus where a lessor covenanted with the lessee, his executors, administrators and assigns, that he would give a right of pre-emption to the lessee, his executors, administrators and assigns, in respect of a certain piece of adjoining land, the benefit of this covenant was held not to accrue to the assignee of the lease though named (*g*).

Under lease covenants run with land both as to burthen and benefit.

Whenever the vendor sells property subject to certain liabilities, or covenants, for the observance of which he is personally liable, and it is a part of the arrangement that the purchaser shall take the land subject to the same restrictions, the purchaser must enter into a covenant with the vendor to abide by the same (*h*).

When purchaser must covenant with vendor.

If on a sale of land the vendor retains the deeds in respect of the unsold portion, and at the same time enters into an unqualified covenant for their production to the purchaser, and afterwards sells the remainder of the property, the second purchaser would be entitled to the deeds, but he may be required by the vendor to enter into a covenant with him to perform the covenant for production. But if under the recent Act a vendor gives to a purchaser an acknowledgment of his right to production of deeds, such an acknowledgment binds the person giving it so long only as he has possession or control of the deeds, and consequently if he afterwards delivers them to a second purchaser, an undertaking from the latter to perform the obligation is unnecessary.

When purchaser must covenant for production of deeds.

Effect of acknowledgment under recent Act.

Where land is conveyed to more than one person, in terms sufficient to make them joint tenants, the purchasers both at law and in equity take an estate in joint tenancy, if the purchase-money appears to have been advanced by them in equal proportions (*k*); but if this be not the case, and the purchase-money is paid in unequal shares, there would be a survivorship at

Conveyance to joint tenants.

Effect where purchasers advance the purchase-

(*g*) *Collison v. Lettson*, 6 Tau. 224.

(*h*) *Moxhay v. Inderwick*, 1 De G. & S. 708.

(*k*) *Aveling v. Knipe*, 19 Ves. 441.

money in
different pro-
portions.

law, but the purchasers *in equity* would be entitled to the land in the proportions in which the purchase-money was advanced by them respectively (*l*). And if one joint tenant lays out money in repairs or improvements, and dies, this would amount to a lien on the land (*m*), and he would also have a lien on the land for expenses which he might disburse for the renewal of leaseholds (*n*).

Conveyance
for partnership
purposes.

So where a conveyance is made to two partners as joint tenants for partnership purposes, the survivor would hold the estate, as to the share of the deceased partner, as a trustee for his representatives (*o*). And the same principle would apply to the case of a purchase by two or more persons for the purpose of a joint adventure or speculation (*p*).

How convey-
ance to part-
ners should be
taken.

If real estate is purchased for partnership purposes it is sometimes convenient to take the conveyance to the partners as tenants in common in shares corresponding with their shares in the partnership property, without mentioning that it is for partnership purposes: but as a general rule nothing is gained by this plan, and the more usual course is to take the conveyance to the partners as joint tenants "as part of their partnership property." If there are a great many partners, it may be desirable to vest the property in some of them, with a separate declaration of trust.

Purchase in
the name of a
third person.

If a purchase of real or personal estate is taken in the name of a person or persons other than and different from the person who actually paid the purchase-money, there is generally an implied trust in favour of the person who actually paid the money, and parol evidence of such being the case will be received by the Court, although it may appear by the purchase deed that the money was advanced by the nominal purchaser (*q*). At the same time the presumption in favour of an implied trust may be re-

(*l*) 2 Ves. Sen. 258.

(*m*) *Lake v. Gibson*, 1 Eq. Ca. Abr. 290, pl. 3; *White & Tudor's Leading Cases in Equity*, p. 178, 4th ed.

(*n*) *Hamilton v. Denny*, 1 Ball & Bea. 199.

(*o*) *Morris v. Barrett*, 3 Y. & J. 384.

(*p*) *Lake v. Craddock*, 3 P. Wms. 158; *Morris v. Barrett*, 3 Y. & J. 384.

(*q*) *Cripps v. Jee*, 4 B. C. C. 478.

butted by other circumstances brought before the Court in evidence (*r*).

There are, however, exceptions to the rule above stated, as where the purchase is taken in the name of a wife (*s*), child (*t*), or several children (*u*), grandchild where the father is dead (*x*), an illegitimate child if there has been a recognition or filial treatment of the purchaser towards him (*y*), and persons towards whom the purchaser has placed himself *in loco parentis* (*z*). In such cases the purchase is regarded as an advancement, unless satisfactory evidence is produced to negative the presumption that the purchase was intended to operate as such (*a*). A purchase or investment, however, of real or personal estate by a mother in the name of her child, or in the joint names of herself and her child, does not generally raise the presumption that an advancement was intended (*b*).

Exceptions to rule.

So, also, if a person purchases land or stock in the joint names of himself and his wife, or in the joint names of himself and his child, grandchild where the father is dead, or any other person towards whom the purchaser has placed himself *in loco parentis*, the purchase will be regarded as an advancement in the absence of evidence sufficient to rebut the presumption that the purchase was intended as such, and in the event of the purchaser dying first, the survivor will be entitled to take the whole (*c*). An investment made

Purchase in the name of purchaser and a third person.

(*r*) Rider *v.* Kidder, 10 Ves. 360; Beecher *v.* Major, 2 Drew. & Sm. 431.

(*s*) Glaister *v.* Hower, 8 Ves. 199; see also Drew *v.* Martin, 10 Jur. 356.

(*t*) Mumma *v.* Mumma, 2 Vern. 19; Dyer *v.* Dyer, 2 Cox, 92; W. N. 1877, 184; Hepworth *v.* Hepworth, L. R. 11 Eq. 10.

(*u*) Finch *v.* Finch, 15 Ves. 43.

(*x*) Ebrand *v.* Dancer, 2 Cha. Ca. 26.

(*y*) Kilpin *v.* Kilpin, 1 M. & K. 542. But see Tucker *v.* Barrow, 2 Hem. & Mil. 515.

(*z*) Ebrand *v.* Dancer, 2 Cha. Ca. 26; Currant *v.* Jago, 1 Coll. 261.

(*a*) Rider *v.* Kidder, 10 Ves. 360; Dart, 1059, 6th edition; Scawin *v.* Scawin, 1 Y. & C. C. C. 65.

(*b*) Bennet *v.* Bennet, 10 Ch. D. 474.

(*c*) Dormer *v.* Pitcher, 2 My. & K. 262; Low *v.* Carter, 1 Beav. 426; Vance *v.* Vance, 1 Beav. 605; Fowkes *v.* Pascoe, L. R. 10 Ch. 343; Sayer *v.* Hughes, L. R. 5 Eq. 376; Batstom *v.* Salter, L. R. 10 Ch. 431; Standing *v.* Bowring, 27 Ch. D. 341; Teage *v.* Sullivan, 28 Ch. D. 705. As to purchases made by a married woman out of her separate estate, in the name of her child, or a person to whom she had placed herself *in loco parentis*,

in the names of a wife or child and a stranger is in fact an advancement for the wife or child, and the stranger would hold as trustee for the person entitled to the advancement (*c*). But a voluntary transfer by a wife of stock belonging to her for her separate use into the name of the husband is not of itself a gift to him (*d*).

As to outstanding legal estate.

The vendor is bound to get in at his own expense any outstanding legal estate, but if it appears that a legal estate which has not been actually got in began to be outstanding many years ago, the question arises whether it has not ceased to be subsisting under the operation of the Statute of Limitations. If the relation between the holders of the legal and beneficial estates has been that of trustee and *cestui que trust* upon an express trust, or of mortgagee and mortgagor, no length of possession by the beneficial owner will have barred the legal right of the legal owner, the case being within the exception at the end of sect. 7 of 3 & 4 Will. 4, c. 27. But if the legal owner has not been an express trustee or mortgagee, or has ceased to be such, the beneficial owner will have been a tenant at will within the meaning of that section, and will have acquired a good legal title at the end of thirteen years from the time when the tenancy at will began (*e*). In a case where a freeholder agreed with builders to grant a lease, and the latter took possession under the agreement and performed their part of it, it was held that the former were trustees within the meaning of the statute (*f*); but in another case where a legal mortgage was paid off but no reconveyance was executed, it was held that the mortgagee was neither a trustee nor a mortgagee after the money was paid, and consequently that his legal right was barred at the end of thirteen years from that time (*g*).

Independently of the operation of the Statute of

see *Re De Vesme*, 2 De G. J. & Sm. 17; *Beecher v. Major*, 2 Drew. & Sm. 431.

(*c*) *In re Eykyn's Trusts*, 6 Ch. D. 115.

(*d*) *Haweis v. Coates*, W. N. 1885, p. 291.

(*e*) 37 & 38 Vict. c. 57, sect. 1; 3 & 4 Will. 4, c. 27, s. 7.

(*f*) *Drummond v. Sant*, L. R. 6 Q. B. 763.

(*g*) *Sands v. Thompson*, 22 Ch. D. 614.

Limitations, a conveyance of the legal estate will sometimes be presumed (*h*).

It was formerly the practice on a purchase, when it appeared that the property was subject to a term of years created for purposes which had become satisfied, to keep the term alive by assigning it to a trustee for the purchaser to attend the inheritance and protect it from mesne incumbrances. This practice was put an end to by the Act 8 & 9 Vict. c. 112, which in effect enacts that (with an exception intended to protect existing interests) all terms of years which by express declaration or construction of law should on the 31st day of December, 1845, be attendant on the inheritance, or which becoming satisfied after that date should either by express declaration, or by construction of law, become attendant on the inheritance, should absolutely cease and determine. The Act extends to freeholds and such customary lands as will pass by deed, or deed and admittance, and not by surrender (*i*).

Satisfied terms.

Act for dispensing with their assignment.

It must be borne in mind, however, that the term will not cease under the Act, unless the term is *satisfied*, and it will not be held to be satisfied so long as there remains any useful purpose beneficial to the owner of the term, and consistent with the trusts on which the term is directed to be held. Thus, where (*h*) a mortgage for a term was paid off by a person who believed himself to be owner of the fee but who afterwards was proved not to be such by reason of the existence of a deed executed after the creation of the term, and unknown to him, it was held that the payment having been made by him under a mistake, the term was not satisfied: and in another case (*l*), where a term created by way of mortgage had become vested by transfer in a trustee for the mortgagee, and the mortgagor conveyed the fee to the mortgagee in consideration of a release of the debt, but the wife of the mortgagor, although made a party, did not execute the deed,

Purchaser should ascertain that term is satisfied.

(*h*) See Vol. II. p. 199.

(*i*) See sect. 3.

(*k*) Doe d. Clay v. Jones, 13 Q. B. 774; 18 L. J. Q. B. 260. See,

also, Shaw v. Johnson, 1 Drew. & Sm. 412.

(*l*) Anderson v. Pignott, L. R. 8 Ch. 180.

it was held that the term remained on foot as a protection against the wife's dower. So, if by a settlement the term is created for the purpose of raising portions, and the tenant for life of the settled estate pays off the charge, the term does not by such payment become satisfied for the benefit of the inheritance^(m). Where a term would not merge in the inheritance if united in the same person, it will not be attendant when vested in a trustee.

When incumbrances should be kept on foot.

If at the date of the purchase there are mortgages on the estate which are to be discharged, and there is ground for suspecting the existence of mesne incumbrances, it may be desirable to keep alive those charges for the purchaser's protection⁽ⁿ⁾. An assignment to a trustee is not, however, necessary, as a simple declaration of the intention to keep the charges alive will answer the same purpose.

Execution of conveyance, and receipt for purchase-money.

Whether a purchaser can insist on the vendor executing the deed in the presence of his (the purchaser's) solicitor was, until the recent Act, frequently made a question^(o). It is now enacted that a purchaser shall not be entitled to require that the conveyance be executed in his presence or in that of his solicitor as such, but that he may at his own cost have its execution attested by some person appointed by him, who may, if he thinks fit, be his own solicitor^(p). It is also provided as to cases where the consideration is to be paid or given after the commencement of the Act, that where a solicitor produces a deed having in the body or indorsed thereon a receipt for consideration money or other consideration, the deed being executed or the indorsed receipt being signed by the person entitled to give a receipt for that consideration, the deed shall be sufficient authority to the person liable to pay or give the same for his paying or giving the same to the solicitor without the solicitor producing any separate or other direction or authority in that

^(m) *Hill's Trustees*, 318.

⁽ⁿ⁾ *Parry v. Wright*, 1 Sim. & Stu. 369.

^(o) *Viney v. Chaplin*, 2 De G. & J. 468; *Essex v. Daniell*, L. R. 10 C. P. 538.

^(p) Conveyancing Act, 1881, s. 8.

behalf from the person who executed or signed the deed or receipt (*q*).

Under the above enactment a deed in the form mentioned was held to be equivalent to a special authority from the vendor to the solicitor to receive the money, but would not enable fiduciary vendors to give such an authority in cases where before the Act they could not have done so, and that as it would be a breach of trust in a trustee to authorize his solicitor to receive money except under special circumstances, a purchaser was entitled, notwithstanding the enactment, to insist on paying his money either to the trustees personally, or into a bank to their joint account (*r*). This rule, however, is now altered by sect. 2 of the Trustee Act, 1888 (51 & 52 Vict. c. 59), which empowers a trustee, as to money or valuable consideration, or property receivable by him after the 24th day of December, 1888, to appoint a solicitor to be his agent to receive and give a discharge for the same by permitting him to have the custody of and to produce a deed containing any such receipt as is referred to in the 56th section of the Conveyancing Act, 1881, and declares that the producing of any such deed by such solicitor shall have the same validity under that section as it would have had if the person appointing such a solicitor had not been a trustee.

Construction of enactment.

Trustee Act, 1888, places trustee on footing of any other person as to power to appoint a solicitor to receive purchase-money, &c.

Auctioneer may receive deposit.

If the property is sold by auction, the auctioneer is entitled to receive the deposit, but without special authority he cannot give a discharge for the remainder of the purchase-money (*s*).

V. *The arrangements to be made on a purchase in relation to the custody of the title deeds, attested copies, &c.*

All the deeds in the possession of the vendor relating to the property sold, and to no other property, must be delivered to the purchaser on the completion

Title deeds relating solely to the property sold, to be delivered to the purchaser.

(*q*) Sect. 56.
(*r*) *Bellamy v. Met. Board of Works*, 24 Ch. D. 357; *Flower and*

Met. Board of Works, 27 Ch. D. 592.
(*s*) *Sykes v. Giles*, 5 M. & W. 645.

of the purchase, however ancient such deeds may be (*t*).

Rule where deeds relate to other property also.

If property held under one title is sold in lots, and there is no stipulation as to the custody of the deeds, the practice is for the purchaser of the larger portion in value to have their custody. If, however, a vendor contracts for the sale of an estate, and the deeds relate not only to such estate but to other land retained by him, it is provided by the Vendor and Purchaser Act, 1874 (*u*), that he shall retain the deeds (*x*).

Vendor's obligation as to deeds, &c., when not delivered to purchaser.

If on the sale of part of an estate the deeds are retained by the vendor, and the purchase is completed without any covenant being entered into, or, under the Conveyancing Act, 1881, any acknowledgment being given by the vendor for their production, on a re-sale of the purchased estate it seems that the vendor could be compelled in equity to produce the deeds (*y*).

In absence of stipulation purchaser entitled to deeds or covenant or acknowledgment for production.

In the absence of a stipulation to the contrary, a purchaser cannot be compelled to complete unless the title deeds are delivered to him, or unless a covenant, or statutory acknowledgment is given to him for their production, or unless, without such covenant or acknowledgment, he would have a right to their production on equitable grounds (*z*).

Old rule as to expense of attested copies under an open contract, and also as to covenants for production.

It was formerly the rule that, in the absence of an express stipulation to the contrary, the vendor was bound, at his own expense, to supply the purchaser with attested copies of the documents which were not delivered up to him, with the exception of instruments on record, and at the like expense to supply the purchaser with a covenant for their future production at his own expense; but under the Conveyancing Act, 1881 (*a*), the expense of copies and documents not in the vendor's possession, and under the Vendor and Pur-

Alterations in these respects under recent Act.

(*t*) *Parr v. Lovegrove*, 4 Drew. 182, note.

(*u*) Sect. 2, r. 5.

(*x*) Sug. V. & P. 361, 13th ed.

(*y*) *Fain v. Ayres*, 2 Sim. & Stu. 533.

(*z*) V. & P. Act, 1874, sect. 2,

r. 3. Before this Act, the want of a legal right to production was a fatal objection to the title. See *Barclay v. Paine*, 1 Sim. & Stu. 449.

(*a*) Sect. 3, sub-sect. 6.

chaser Act (*b*), the expense of covenants for production, must be borne by the purchaser requiring them. Instead of the covenant for production, which has been usually given, the 9th section of the Conveyancing Act, 1881 (*c*), provides for the vendor giving to the purchaser an acknowledgment in writing of his (the purchaser's) right to production of the documents, and to delivery of copies thereof, and an undertaking for their custody.

It is stated in a former page of this volume (*d*), that where the vendor is a trustee it is the general practice for him to give the acknowledgment, but not the undertaking.

If on the sale of copyholds the copies of court roll are in the possession or power of the vendor, he is bound to produce them, but if not, the purchaser is not entitled to a covenant for their production, or an acknowledgment under the recent Act, as he may at any time resort to the rolls themselves (*e*).

Production
of copies of
court roll.

A tenant in common, or joint tenant, who obtains possession of the title deeds, is entitled to retain them, but he will be bound to produce them for the inspection of his co-tenants (*f*).

One joint
tenant, &c., to
produce deeds
to others.

It was formerly the general rule that a mortgagee could not be compelled to produce the deeds until he was paid off (*g*); but under the Conveyancing Act, 1881 (as to mortgages made after the commencement thereof), a mortgagor, so long as his right to redeem subsists, is entitled, on his request, and at his own cost, and on payment of the mortgagee's costs, to inspect and make copies or abstracts of or extracts from documents of title in the mortgagee's custody or power (*h*).

Production of
deeds by mort-
gagee.

(*b*) Sect. 2, r. 4.

(*c*) This Act is set out verbatim in the Appendix. See, also, *supra*, p. 20.

(*d*) See *supra*, p. 20.

(*e*) *Cooper v. Emery*, 1 Ph. 388.

(*f*) *Lambert v. Rogers*, 2 Mer. 489.

(*g*) *Sparke v. Montriou*, 1 Y. & C. 133.

(*h*) Conveyancing Act, 1881, sect. 16.

VI. By whom the Expenses of and Incidental to the Conveyance are to be borne.

Costs of conveyance.

Costs of surrender of and admission to copyholds.

Expense of getting in incumbrances.

Vendor dying before completion.

Where there is no stipulation on the subject of expenses, the costs of the conveyance and of all matters relating thereto must be borne by the purchaser, but the expense attendant on the execution and examination of the deed by or on account of the conveying parties must be paid by the vendor (*i*). And in the absence of stipulation, on the purchase of a copyhold estate, the purchaser must pay the expense of the surrender and his admittance (*k*). In a case where it was stipulated that the purchaser should have proper surrenders at his expense, it was held that the fine on admittance of the heir of the vendor who had died after the contract was an extraordinary expense which must be borne by the vendor (*l*). Where the vendor agreed to surrender and assure the copyholds at his own costs, it was held that the vendor was not liable to pay the fine which became payable on the purchaser's admittance (*m*).

If the property is subject to incumbrances at the date of the contract, they must either be got in by a separate deed at the vendor's expense before the conveyance, or if they are released by the deed of conveyance, the expenses of the purchase deed, so far as they are increased by the concurrence of the incumbrancer in the same deed, may be thrown on the vendor (*n*). But the purchaser would not be entitled to throw such expense on the vendor when the mortgage debts are kept on foot for the purchaser's protection (*o*).

If a person who has entered into a binding contract for sale has died before the 1st January, 1882, having devised the legal estate to an infant, his estate must bear the expense of the suit thus rendered necessary, but otherwise if he has died intestate leaving an infant heir (*p*).

(*i*) Dart, 798, 6th ed.; Vendor and Purchaser Act, 1874, sect. 2, r. 4.

(*k*) Sug. V. & P. 452.

(*l*) Paramore v. Greenslade, 1 Sm. & Gif. 541.

(*m*) Graham v. Sime, 1 East, 632.

(*n*) Sug. V. & P. 448; Reeves v. Gill, 1 Beav. 375.

(*o*) Dart, 471.

(*p*) Purser v. Darby, 4 Kay & J.

In the case of a vendor dying after the 31st December, 1881, his personal representatives have power to convey the land to the purchaser (*q*).

Personal representatives of vendor dying after 1881 can convey.

VII. STAMPS UPON CONVEYANCES.

By the Stamp Act, 1870 (33 & 34 Vict. c. 97), CONVEYANCES *upon the sale* of any property must be stamped with the following duties:—

Stamps on conveyances.

Where the amount or value of the consideration for the sale does not exceed £5				£	s.	d.
				0	0	6
And where the same exceeds £5 and does not exceed £10				0	1	0
„	„	10	„	15	0	1 6
„	„	15	„	20	0	2 0
„	„	20	„	25	0	2 6
„	„	25	„	50	0	5 0
„	„	50	„	75	0	7 6
„	„	75	„	100	0	10 0
„	„	100	„	125	0	12 6
„	„	125	„	150	0	15 0
„	„	150	„	175	0	17 6
„	„	175	„	200	1	0 0
„	„	200	„	225	1	2 6
„	„	225	„	250	1	5 0
„	„	250	„	275	1	7 6
„	„	275	„	300	1	10 0

And where the consideration exceeds £300, then for every £50, and also for any fractional part of £50 of such amount or value 0 5 0

The term “conveyance on sale” includes every instrument, and every decree or order of any court or of any commissioners, whereby any property upon the sale thereof is legally or equitably transferred to or vested in the purchaser or any other person on his behalf or by his direction (*r*).

Interpretation of term.

41; *Scott v. Scott*, 11 W. Rep. 766;
Barker v. Venables, 11 Jur. 480.

(*q*) Conveyancing Act, 1881, sect. 4.
(*r*) Sect. 70.

How *ad valorem* duty to be calculated in respect of stock and securities.

(1.) Where the consideration, or any part of the consideration, for a conveyance on sale consists of any stock or marketable security, such conveyance is to be charged with *ad valorem* duty in respect of the value of such stock or security.

(2.) Where the consideration, or any part of the consideration, for a conveyance on sale consists of any security not being a marketable security, such conveyance is to be charged with *ad valorem* duty in respect of the amount due on the day of the date thereof for principal and interest upon such security (s).

How consideration consisting of periodical payments to be charged.

(1.) Where the consideration, or any part of the consideration for a conveyance on sale consists of money payable periodically for a definite period, so that the total amount to be paid can be previously ascertained, such conveyance is to be charged in respect of such consideration with *ad valorem* duty on such total amount.

(2.) Where the consideration, or any part of the consideration, for a conveyance on sale consists of money payable periodically in perpetuity, or for any definite period not terminable with life, such conveyance is to be charged in respect of such consideration with *ad valorem* duty on the total amount which will or may, according to the terms of sale, be payable during the period of twenty years next after the day of the date of such instrument.

(3.) Where the consideration, or any part of the consideration, for a conveyance on sale consists of money payable periodically during any life or lives, such conveyance is to be charged in respect of such consideration with *ad valorem* duty on the amount which will or may according to the terms of sale, be payable during the period of twelve years next after the day of the date of such instrument.

(4.) Provided that no conveyance on sale chargeable with *ad valorem* duty in respect of any periodical payments, and containing also provision for securing such periodical payments, is to be charged with any duty whatsoever in respect of such provision, and no separate instrument made in any such case for securing such periodical payments is to be charged with any higher duty than 10s. (t).

(s) Sect. 71.

(t) Sect. 72. See *Limmer Asphalte*

Paving Co. v. Commissioners of Inland Revenue, L. R. 7 Ex. 211.

Where any property is conveyed to any person in consideration, wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance upon the property or not, such debt, money, or stock is to be deemed the whole or part, as the case may be, of the consideration, in respect whereof the conveyance is chargeable with *ad valorem* duty (*u*).

How conveyance in consideration of a debt or subject to future payment, &c., to be charged.

(1.) Where any property has been contracted to be sold for one consideration for the whole, and is conveyed to the purchaser in separate parts or parcels by different instruments, the consideration is to be apportioned in such manner as the parties think fit, so that a distinct consideration for each separate part or parcel is set forth in the conveyance relating thereto, and such conveyance is to be charged with *ad valorem* duty in respect of such distinct consideration.

Direction as to duty in certain cases.

(2.) Where property contracted to be purchased for one consideration for the whole by two or more persons jointly, or by any person for himself or others, is conveyed in parts or parcels by separate instruments to the persons by or for whom the same was purchased for distinct parts of the consideration, the conveyance of each separate part or parcel is to be charged with *ad valorem* duty in respect of the distinct part of the consideration therein specified.

(3.) Where a person, having contracted for the purchase of any property, but not having obtained a conveyance thereof, contracts to sell the same to any other person, and the property is in consequence conveyed immediately to the sub-purchaser, the conveyance is to be charged with *ad valorem* duty in respect of the consideration for the sale by the original purchaser to the sub-purchaser.

(4.) Where a person, having contracted for the purchase of any property, but not having obtained a conveyance, contracts to sell the whole, or any part or parts thereof, to any other person or persons, and the property is in consequence conveyed by the original seller to different persons in parts or parcels, the conveyance of each part or parcel is to be charged with *ad valorem* duty, in respect only of the consideration moving from

(*u*) Sect. 73.

the sub-purchaser thereof, without regard to the amount or value of the original consideration.

(5.) Where a sub-purchaser takes an actual conveyance of the interest of the person immediately selling to him, which is chargeable with *ad valorem* duty in respect of the consideration moving from him, and is duly stamped accordingly, any conveyance to be afterwards made to him of the same property by the original seller shall be exempt from the said *ad valorem* duty, and chargeable only with the duty to which it may be liable under any general description, but such last-mentioned duty shall not exceed the *ad valorem* duty (x).

As to the sale of an annuity or right not before in existence.

Where upon the sale of an annuity or other right not before in existence, such annuity or other right is not created by actual grant or conveyance, but is only secured by bond, warrant of attorney, covenant, contract, or otherwise, the bond or other instrument, or some one of such instruments, if there be more than one, is to be charged with the same duty as an actual grant or conveyance, and is for all the purposes of the Act to be deemed an instrument of conveyance on sale (y).

Where several instruments, the principal instrument only to be charged with *ad valorem* duty.

Where there are several instruments of conveyance for completing the purchaser's title to the property sold, the principal instrument of conveyance only is to be charged with *ad valorem* duty, and the other instruments are to be respectively charged with such other duty as they may be liable to, but such last-mentioned duty shall not exceed the *ad valorem* duty payable in respect of the principal instrument (z).

Principal instrument, how to be ascertained.

(1.) In the cases below specified the principal instrument is to be ascertained in the following manner:—

- (a) Where any copyhold or customary estate is conveyed by a deed, no surrender being necessary, the deed is to be deemed the principal instrument.
- (b) In other cases of copyhold or customary estates the surrender or grant, if made out of Court, or the memorandum thereof, and the copy of court roll of the surrender or grant, if made in Court, shall be deemed the principal instrument.
- (c) Where in Scotland there is a disposition or assignation executed by the seller, and any other instrument is

(x) Sect. 74.

(y) Sect. 75.

(z) Sect. 76.

executed for completing the title, the disposition or assignation is to be deemed the principal instrument.

(2.) In any other case the parties may determine for themselves which of several instruments is to be deemed the principal instrument, and may pay the *ad valorem* duty thereon accordingly (a).

ANY SEPARATE DEED OF COVENANT (not being an instrument chargeable with *ad valorem* duty as a conveyance on sale or mortgage), made on the sale or mortgage of any property, and relating solely to the conveyance or enjoyment of, or the title to, the property sold or mortgaged, or to the production of the muniments of title relating thereto, or to all or any of the matters aforesaid, is chargeable with a duty equal to the *ad valorem* duty on the consideration or mortgage money, where the *ad valorem* duty shall not exceed 10s., and in any other case with a duty of 10s. (b).

Separate deed of covenant.

THE DUPLICATE OR COUNTERPART of an instrument charged with duty must be stamped with the same duty as the original instrument where the duty does not amount to 5s., and in any other case with a duty of 5s. The 93rd section of the Stamp Act, 1870, provides that the duplicate or counterpart of an instrument chargeable with duty (except the counterpart of an instrument chargeable as a lease, such counterpart not being executed by or on behalf of any lessor or grantor), is not to be deemed duly stamped unless it is stamped as an original instrument, or unless it appears by some stamp impressed thereon that the full and proper duty has been paid upon the original instrument of which it is the duplicate or counterpart.

Duplicates.

SUBJECT to such regulations as the Commissioners may think fit to make, they may be required by any person to express their opinion with reference to any executed instrument: (1) Whether it is chargeable with any duty; (2) With what amount of duty it is chargeable. If the Commissioners determine that the instrument is not chargeable with duty, it may be stamped with a stamp denoting that it is not so chargeable. If they determine that it is chargeable with duty, they are to assess the duty with which in their opinion it is chargeable, and when the instrument is duly stamped in accordance with the assessment

Opinion of Commissioners as to sufficiency of stamp.

(a) Sect. 77.

(b) 33 & 34 Vict. c. 97, under the head "Covenant."

it may be also stamped with a particular stamp denoting that it is duly stamped (*b*). Any person dissatisfied with the assessment of the Commissioners may within twenty-one days after the assessment appeal against the assessment to Her Majesty's Court of Exchequer (*c*).

Unstamped
instrument.

By the Stamp Act, 1870, it was provided that any unstamped or insufficiently stamped instrument might be stamped after its execution on payment of the unpaid duty, and a penalty of £10, and, where such duty exceeds £10, of interest thereon, after the rate of £5 per cent. per annum on the duty or deficiency of duty to be paid from the execution of the instrument up to the time when such interest is equal in amount to the unpaid duty, and a power was given to the Commissioners, at any time within twelve months after the first execution of any instrument, to remit the penalty or any part thereof (*d*).

Provisions of
Act of 1888.

By the Customs and Inland Revenue Act, 1888 (*dd*), the following provisions are made applicable to instruments executed after the 16th May, 1888, which are chargeable with *ad valorem* duty as specified in the 1st Schedule to that Act, and which Schedule includes conveyances on a sale (*e*), viz. :—

The instrument, unless it is written upon duly stamped material, must be duly stamped with the proper *ad valorem* duty before the expiration of thirty days after it is first executed, or after it has been first received in the United Kingdom if first executed abroad, unless the opinion of the Commissioners of Inland Revenue with respect to the amount of duty has been required, in which case the stamping must be within fourteen days after the date of notice of the assignment.

If the instrument is not duly stamped as above, the vendee is to forfeit £10, and, in addition to the penalty imposed by the Act of 1870 on stamping the instrument, a further penalty is to be paid equivalent to the stamp duty thereon, unless a reasonable excuse for the delay or omission is afforded to the satisfaction of the Commissioners.

UNTIL the deed or instrument is properly stamped, it cannot be offered in evidence (except in criminal cases) (*f*). The

- (*b*) Sect. 18.
- (*c*) Sect. 19.
- (*d*) Sect. 15.
- (*dd*) 51 Vict. c. 8.

- (*e*) The Schedule also includes mortgages, leases, and settlements.
- (*f*) Sect. 17. See *Whiting v. Loomes*, 17 Ch. D. 10.

absence of the proper stamp, however, does not affect the validity of the deed.

If a document, upon its production as evidence in any Court of Judicature in any part of the United Kingdom, is found not to be sufficiently stamped, the officer of the Court is empowered to receive and give a receipt for the unpaid duty and the penalty required by the statutes, and a further sum of £1. On this being done the document will be admissible in evidence, and the Commissioners are required to denote the payment of such duty and penalty on the instrument on the production of the receipt of the said officer (g).

Production of documents as evidence.

The transaction, in order to require an *ad valorem* stamp as upon a conveyance, must be a sale of property.

What is property within meaning of Stamp Act.

An assignment of personalty was made to trustees in trust to sell, and out of the proceeds to pay themselves the debts owing to them, and then the debts due to the other creditors, and to pay over the surplus to the assignees; this assignment was held to require only a common deed stamp (h). A conveyance by a father to his son in consideration of natural love, &c., and also of the provision which the son had that day made by bond of £1,500 for his sister's portion, is not a sale (i). By a marriage settlement the uncle of the husband agreed, in consideration of the portion advanced by the lady, to pay to the trustees for the use of the husband and wife, during their joint lives, an annuity of £800: the Court held that this was not a sale, and did not require the deed to be stamped as a conveyance on the sale of property (k). Where an instrument which purported to be a release of land, but which not being by deed could not operate as such, contained a stipulation not to disturb the party who intended to take the premises, it was held to operate as an agreement, and to require a stamp appropriate to such instrument (l). In *Warren v. Howe* (m), it was decided that a judgment debt was not property within the meaning of the Stamp Act, title "Conveyance;" but this decision has been virtually

(g) Sect. 16.

(h) *Coates v. Perry*, 3 Brod. & B. N. C. 478.

48.

(i) *Denn v. Diamond*, 4 B. & C. 243.

(k) *Massey v. Nanney*, 3 Bing.

N. C. 478.

(l) 6 B. & C. 665.

(m) 2 B. & C. 281.

overruled (*n*). It is also clear that an assignment of a policy of assurance is a conveyance on sale of property within the Stamp Act (*o*). In *Belcher v. Brymer* (*p*), two persons who had entered into certain contracts with the Victualling Office, agreed to dissolve partnership, and executed a deed whereby one agreed to resign to the other all his interest in those contracts, all debts due to the concern, and all share of the partnership property, and the other agreed to pay him £50,000, at which sum his share was valued; it was held, on the authority of *Warren v. Howe*, that this was not a sale of property, and did not require an *ad valorem* stamp. But in a case where on a dissolution of a partnership, a deed was executed by which the retiring partner, in consideration of the sum of £17,313, part of the moneys and assets of the dissolved co-partnership, to him allowed in account as an equivalent for the value of his share, conveyed his share in the real assets to the continuing partners, the deed was held to be a conveyance upon a sale so as to require an *ad valorem* stamp (*q*); and in *Potter v. The Commissioners of Inland Revenue* (*r*), it was held that the assignment of the *goodwill* of a trade required such stamp. So also where on the dissolution of a partnership between two persons, the share of the retiring partner was by a deed conveyed to the other partner in consideration of £10,000, being the sum at which the share of the retiring partner was valued, this deed was held to be a conveyance of property within the meaning of the Stamp Act (*s*).

Where an *ad valorem* stamp is imposed, a deed stamp is not necessary, though the former should be less in amount (*t*).

No additional stamp is necessary when the deed contains only what is incidental to the sale, as a covenant for the production of deeds or an assignment of terms to attend the inheritance (*u*).

Compound of
purchase and
mortgage.

If the instrument is a compound of a purchase and a mortgage, the deed must be stamped with the proper *ad valorem* duties, as on a purchase and mortgage for the specified sums.

(*n*) See observations of Rolfe, B., on this point in *Caldwell v. Dawson*, 5 Ex. Rep. 1.

(*o*) *Caldwell v. Dawson*, 5 Ex. Rep. 1.

(*p*) 6 B. & C. 234.

(*q*) *Phillips v. The Commissioners*

of Inland Revenue, L. R. 2 Ex. 399.

(*r*) 10 Ex. Rep. 147.

(*s*) *Christie v. The Commissioners of Inland Revenue*, L. R. 2 Ex. 46.

(*t*) *Clayton v. Burtenshaw*, 5 B. & C. 41.

(*u*) 2 Ad. & El. N. S. 321.

The 15 & 16 Vict. c. 55, s. 13, provides that all vesting orders under the Trustee Act, 1850, or under that Act, having the effect of conveyances, &c., must be stamped as if they had been deeds.

No. I.

PARCELS *with* GENERAL WORDS.PARCELS WITH
GENERAL
WORDS.

1. ALL THAT piece or parcel of meadow or pasture land commonly called or known by the name of —, situate in the parish of —, in the county of —, containing by admeasurement —, or thereabouts, and bounded on the north by land of —, and on all other sides by land of —, which piece or parcel of land is in the occupation of —, as yearly tenant thereof, and is delineated and coloured pink in the map or plan drawn in the margin of these presents (*p*).

1.
A close of
land.

2. ALL THAT messuage or dwelling-house with the outbuildings, yard, and garden thereto belonging, commonly called — cottage, situate in — lane, in the parish of —, in the county of —, and now in the occupation of —, as yearly tenant thereof, which premises contain together by admeasurement —, or thereabouts, and are delineated and coloured pink in the map or plan drawn in the margin of these presents.

2.
A house in a
suburb.

3. ALL THAT messuage or dwelling-house, with the outbuildings and yard belonging thereto, being No. 4, — street, in the parish of —, in the county of Middlesex, and now in the occupation of —, under a lease dated the — day of —, for a term of — years, commencing from the date of

3.
A house in a
street.

(*p*) There is no longer any necessity for setting out in the conveyance the "general words" which formerly followed immediately after the description of the parcels, as, under the Conveyancing Act, 1881, sect. 6, they are now implied. The Act is set out at length in the Appendix.

Introduction
of general
words no
longer neces-
sary.

**PARCELS WITH
GENERAL
WORDS.**

the said lease, at the yearly rent of —, which messuage and premises are bounded, &c. (r).

4.
A plot of
building land,
with a house
lately erected
thereon, and a
right of road.

4. ALL THAT plot, piece, or parcel of ground situate in the parish of —, in the county of —, on the north side of a new road or street now in course of formation, and called or intended to be called — road, which plot, piece, or parcel of ground is bounded, &c., and contains in width from east to west — feet or thereabouts, and in depth from north to south — feet or thereabouts, and the same is delineated and coloured pink in the map or plan drawn in the margin of these presents: AND ALSO the messuage or tenement lately erected on the said plot, piece, or parcel of ground, and numbered or intended to be numbered — in — road aforesaid: AND ALSO full and free right and liberty in common with the owners and occupiers of the other messuages and premises in the said road or street, to pass and repass over and along the same road or street either with or without horses, carts, and carriages, at all times and for all purposes, the said —, his heirs and assigns, paying a rateable proportion with the said other owners and occupiers, of the expense of keeping the said road or street in repair (r).

5.
A farm and
lands.

5. ALL THAT farm, with the messuage, tenement, or farmhouse, barns, stables, outhouses, closes, pieces, or parcels of land belonging thereto, called — farm, situate in the parish of —, in the county of —, containing together by admeasurement — or thereabouts, and in the occupation of — as yearly tenant thereof, all which premises are more particularly described in the schedule hereunder written, and are delineated and coloured pink in the map or plan hereunto annexed, and referred to by the said schedule (r).

6.
A large estate,
comprising
manor,
advowson,
mansion-
house, and
farms.

6. ALL THAT the manor or lordship of —, or reputed manor or lordship of —, in the county of —, and all that the advowson or perpetual right of presentation of and to the rectory and parish church of —, in the county of —: AND ALSO all that capital messuage or mansion house called — Hall, situate in the parish of —, with the stables, outbuild-

(r) See note, *supra*, p. 221.

ings, lawns, pleasure grounds, plantations, cottages, and pieces or parcels of land thereunto belonging, and held therewith, containing together by admeasurement — or thereabouts, and now or late in the possession of the said (*vend*or) or his under-tenants: AND ALSO all that farm, with the messuage, tenement, or farm-house, buildings, closes, and parcels of land belonging thereto, called — farm, situate in the said parish of —, containing together by admeasurement —, and now in the occupation of —, at the yearly rent of £—: AND ALSO all that farm, &c. (*describe it in the same way*), all which capital and other messuages, farms, lands, tenements, and hereditaments (except the said manor and advowson), are more particularly described in the schedule hereunder written, and are also delineated in the map or plan hereunder annexed and referred to by the said schedule (s).

PARCELS WITH
GENERAL
WORDS.

7. ALL THAT, &c. (*parcels as described in the court rolls*), To ALL which hereditaments hereinbefore described the said A. B. (*vend*or) was admitted tenant at a court holden in and for the said manor, on the — day of —, (*or* “was admitted tenant out of court, on the — day of —”).

7.
Copyholds.

8. (F.) ALL SUCH and so many and such part or parts as is or are of freehold tenure of all, &c.

8.
Freeholds and
copyholds
intermixed
where they
cannot be
distinguished.

(C.) ALL SUCH and so many and such part or parts as is or are of copyhold or customary tenure of the hereditaments and premises hereinbefore described, and the freehold parts whereof are hereinbefore conveyed.

9. (F.) ALL THOSE messuages or tenements, lands, and hereditaments situate in the parish of —, in the county of —, particularly mentioned and described in the schedule hereunder written, and delineated in the map or plan hereunder annexed, and referred to by the said schedule: SAVE and except out of the conveyance intended to be hereby made, such and so many and such part or parts of the hereditaments comprised in the

9.
Freeholds and
copyholds
where they
cannot be dis-
tinguished.
(Another
Form.)

(s) See note, *supra*, p. 221.

PARCELS WITH
GENERAL
WORDS.

said schedule as being of copyhold tenure is and are hereinafter covenanted to be surrendered.

(C.) ALL THAT customary messuage, &c. (*parcels according to the ancient description in the court rolls*), To which premises the said A. B. was admitted tenant at a court holden in and for the said manor on the — day of —, And which premises hereby covenanted to be surrendered, are now better known as constituting the copyhold portions of the hereditaments described in the schedule hereunder written.

10.
Where there
are ancient
and modern
descriptions.

10. ALL THOSE hereditaments formerly described as follows, that is to say, (*insert ancient description*), and which hereditaments are now better known by the following description, namely (*insert modern description*).

11.
A very short
form by
reference
to schedule.

11. THE hereditaments described in the schedule hereto.

12.
Allotment.

12. ALL THAT allotment piece or parcel of land, numbered — on the map annexed to the award of the valuer, dated the — day of —, 18—, and made in the matter of the enclosure of the — Down in the parish of S—, and containing by admeasurement —, which was allotted and awarded in respect of the hereditaments lastly hereinbefore described under and by virtue of the Inclosure Acts.

13.
Tithe rent-
charge.

13. ALL THAT the tithe commutation rent-charge, or yearly sum of £—, in lieu of the great or rectorial tithes, arising on and issuing out of lands comprising in statute measure — acres in the parish of L—, in the county of —, payable by virtue of an award, dated the — day of —, and duly confirmed by the Tithe Commutation Commissioners for England and Wales, on the — day of —, subject nevertheless to variation in accordance with the provisions of the Acts of Parliament under the powers of which the tithes of the said parish were commuted.

No. II.

CONVEYANCE of FREEHOLDS to a PURCHASER in FEE.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part, WITNESSETH that in consideration of the sum of £— as purchase-money to the said A. B. paid by the said C. D. on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges (*t*)), the said A. B., as beneficial owner, hereby conveys (*u*) unto the said C. D. ALL, &c. (*parcels*) (*v*); To HOLD the same unto and to the use of the said C. D. in fee simple (*x*):

CONVEYANCE
OF FREEHOLDS
TO PURCHASER
IN FEE.

Parties.
Consideration.

Conveyance
of parcels,
to purchaser
in fee simple.

(*t*) The 54th section of the Conveyancing Act, 1881, enacts, as to deeds executed after the 31st December, 1881, that a receipt for consideration money or securities, in the body of a deed, shall be a sufficient discharge for the same to the person paying or delivering the same, without any further receipt for the same being indorsed on the deed; and the 55th section enacts, as to deeds executed after the same date, that a receipt for consideration money, or other consideration, in the body of a deed, or indorsed thereon, shall, in favour of a subsequent purchaser, not having notice that the money or other consideration thereby acknowledged to be received was not in fact paid or given, wholly or in part, be sufficient evidence of the payment or giving of the whole amount thereof.

Receipt in
body of deed
now to be
sufficient.

(*u*) In the same Act it is declared that the use of the word "grant" shall not be necessary in order to convey tenements or hereditaments corporeal or incorporeal, and that in a deed it shall be sufficient in the limitation of an estate in fee simple to use the words "in fee simple" without the word "heirs." See sects. 49, 51.

Grant.

Fee simple.

(*v*) The "general words" which have been generally introduced after the description of the parcels are omitted for the reasons given at p. 221, *supra*, and there is also no occasion any longer to insert the "all the estate" clause, as the 63rd section of the recent Act provides that, unless a contrary intention is expressed in the conveyance, every conveyance made after the commencement thereof "shall, by virtue of this Act, be effectual to pass all the estate, right, title, interest, claim, and demand which the conveying parties respectively have in, to, or on the property conveyed, or expressed, or intended so to be, or which they respectively have power to convey, in, to, or on the same."

"All the
estate" clause
no longer
necessary.

(*x*) It is the better opinion that as a purchaser has, under the present law, the power of depriving his wife of her dower out of the purchased property by a subsequent disposition by deed or will, there is no sufficient reason for negating her right to dower by a declaration in the deed of conveyance, and such declaration ought therefore to be omitted in the absence of special instructions or special circumstances. If such a declaration is embodied in the deed it is a bar, although the purchaser does not execute the conveyance. If it should in any case be desired to have the declaration in the conveyance, the following clause can be introduced:—

Declaration
against dower
seldom now
introduced.

"And it is hereby declared by the said C. D. that if he shall die leaving a widow, such widow shall not be entitled to dower out of the said premises."

CONVEYANCE
OF FREEHOLDS
TO PURCHASER
IN FEE.

Acknowledg-
ment by
vendor of
right of pur-
chaser to pro-
duction of
documents and
undertaking
for their safe
custody.

AND THE SAID A. B. hereby acknowledges the right of the said C. D. to production of the documents of title mentioned in the schedule hereto, and to delivery of copies thereof, and hereby undertakes for the safe custody thereof (y). IN WITNESS whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

THE SCHEDULE ABOVE REFERRED TO.

Signed, sealed, and delivered by the
within named A. B. in the presence of

No. III.

APPOINTMENT
AND CONVEY-
ANCE TO USES
TO BAR DOWER.

APPOINTMENT and CONVEYANCE of FREEHOLDS to a
PURCHASER to USES to bar DOWER (z).

Parties.

THIS INDENTURE, made the — day of —, BETWEEN
A. B., of, &c. (vender), of the first part; C. D., of, &c. (pur-

Vendor retain-
ing deeds must
give acknow-
ledgment and
undertaking.

(y) In the absence of a stipulation to the contrary, a vendor retaining the title deeds must give this acknowledgment and undertaking, and the purchaser must be satisfied therewith. See *supra*, p. 210. The acknowledgment will of course be omitted if no deeds are retained by the vendor.

Where widow
entitled to
dower under
old law.

(z) A widow, whose marriage took place before the 1st of January, 1834, is entitled to dower out of all corporeal hereditaments, and also out of all incorporeal hereditaments which savour of the realty, as, for instance, advowsons appendant or in gross, tithes, rents, franchises, commons appendant, &c., of which her husband was solely seised for any legal estate of inheritance in possession at any time during the coverture, and which the issue, if any, of the wife might by possibility inherit, but not out of equitable estates, nor out of an estate of which her husband was joint-tenant if he died before his co-tenant. (Co. Litt. 31 b.) A widow is not dowerable out of property which may go to the heir, if it is personal in its nature (1 Bro. C. C. 377); or out of real estate of the husband which in equity would go to his executors as personal estate. (Phillips v. Phillips, 1 My. & K. 649.) But she is dowerable in respect of a base fee during its subsistence (Doe d. Neville v. Rivers, 7 Tr. 276); and in respect of an estate tail, although the husband may die without issue (Paine's Case, 8 Co. Rep. a); and in respect of an estate limited to the husband in fee simple, subject to a limitation over in case he has no issue, although there may be default of issue. (Moody v. King, 2 Bing. 447.) The widow's right to dower will not be defeated by the escheat of the estate for want of heirs. (Jenk. 6.) If lands were limited to such uses as her husband should appoint, and subject thereto to the use of himself in fee, the wife's

chaser), of the second part; and E. F., of, &c. (*dower-trustee*), of the third part: WHEREAS by an indenture dated the —

APPOINTMENT
AND CONVEY-
ANCE TO USES
TO BAR DOWER.

right to dower might be displaced by an exercise of the power. (*Maundrell v. Maundrell*, 10 Ves. 265; *Ray v. Pung*, 5 Mad. 310.)

The Dower Act, 3 & 4 Wm. 4, c. 105, relates only to the dower of any widow married after the 1st of January, 1834; and it is provided by the 2nd section of that Act, that when a husband shall die beneficially entitled to any land for an interest which shall not entitle his widow to dower out of the same at law, and such interest, whether wholly equitable, or partly legal and partly equitable, shall be an estate of inheritance in possession, or equal to an estate of inheritance in possession (other than an estate in joint tenancy), then his widow shall be entitled in equity to dower out of the same land. The 3rd section of the Act provides, that when a husband shall have been entitled to a right of entry or action in any land, and his widow would be entitled to dower out of the same if he had recovered possession thereof, she shall be entitled to dower out of the same, although her husband shall not have recovered possession thereof, provided such dower is sued for or obtained within the period during which such right of entry or action might be enforced.

Dower Act.

A seisin in law was necessary before the Act, but now a mere right to the land will give a title to dower. The widow, however, must make her claim within the period allowed by the combined operation of 3 & 4 Wm. 4, c. 27, ss. 2, 3, 24, and the Real Property Limitation Act, 1874. The Dower Act also provides, that the widow may be deprived by her husband of her right to dower, not only by a declaration in a deed that she shall not be entitled to dower, but by an absolute disposition of the property in his lifetime, or by his will, or by a declaration in a conveyance to the husband, or by any deed executed by him, or by a declaration in his will, that she shall not be entitled to dower. (Sects. 4, 6, 7.) The 5th section provides that all partial estates and all charges created by any disposition or will of a husband, and all debts, incumbrances, contracts, and engagements to which his land shall be subject, shall be valid as against the wife's right to dower. If the husband devises any land to his widow, out of which she would be dowable if the same had not been so devised, her right to dower is thereby destroyed in respect of any land of her husband, unless the will provided to the contrary. (Sect. 9.) But the Act does not prevent a court of equity from enforcing any covenant or agreement entered into by the husband not to bar the right of his widow to dower out of his lands, or any of them. (Sect. 11.)

What consti-
tutes title to
dower.

The consequences of the 9th section may be remarkable. A woman may have acquired a right to dower out of a large freehold estate—a right which in the absence of any devise to her by her husband would be paramount to the claims of all his creditors—and yet that right may be defeated by the husband devising only a small part of such estate to his wife for no longer a period than her life, even although in the event she may be deprived of all benefit under this devise from the whole of the testator's real estate being required for the payment of his debts. (See *Rowland v. Cuthbertson*, L. R. 8 Eq. 406; *Thomas v. Howell*, 34 Ch. D. 166.)

It follows from the Dower Act that where a purchaser has a wife living, whom he married before the 1st of January, 1834, it is necessary to limit the property to him in such a manner as that he may not have a legal estate of inheritance. This is effected by means of the ordinary uses to bar dower. Under such uses, and subject to the power of appointment, the purchaser takes *at law* only an estate for his life, with an ultimate remainder in fee, which is prevented from merging the life estate by the intervention of the estate given to the dower trustee. Where the property

Where prop-
erty should
be limited to
uses to bar
dower.

**APPOINTMENT
AND CONVEY-
ANCE TO USES
TO BAR DOWER.**

Recite convey-
ance to vendor
to uses to bar
dower.

Agreement for
sale.

First witness-
ing part.

Vendor
appoints.

To uses after
declared.

Second wit-
nessing part.
Vendor con-
veys to pur-
chaser.

Parcels.

To uses after
declared.

day of —, and made between G. H. of the first part, the said A. B. of the second part, and M. N. of the third part, the hereditaments hereinafter described were conveyed to such uses as the said A. B., by any deed or deeds should appoint, and in default of such appointment, and so far as any such appointment should not extend, to the use of the said A. B. during his life without impeachment of waste, with a limitation to the use of the said M. N., his executors and administrators, during the life of the said A. B., in trust for the said A. B., with remainder to the use of the said A. B., in fee simple: AND WHEREAS the said A. B. hath agreed to sell to the said C. D. the said hereditaments at the price of £——: AND WHEREAS the said C. D. is desirous that the same shall be limited to the uses hereinafter mentioned: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c., supra*, p. 225), the said A. B., as beneficial owner, in exercise of the power for this purpose given to him by the hereinbefore recited indenture, and of all other powers (if any) him hereunto enabling, hereby appoints that the hereditaments hereinafter described, shall henceforth go, remain, and be to the uses hereinafter declared concerning the same: AND THIS INDENTURE ALSO WITNESSETH, that for the consideration hereinbefore expressed, the said A. B., as beneficial owner, hereby conveys unto the said C. D. ALL, &c. (*parcels*): To HOLD the same unto the said C. D. in fee simple, to the uses hereinafter declared concerning the same: AND IT IS HEREBY DECLARED, that the

is limited to the vendor to the ordinary uses to bar dower, the practice is for him to appoint as well as convey, and in that case the concurrence of the dower trustee cannot be required, as the legal fee will pass by the exercise of the over-riding power. If the power of appointment is omitted, a technically complete conveyance cannot be made without the concurrence of the dower trustee; but in a case where the power was omitted, and the dower trustee was in Australia, the Court treated an objection founded on his non-concurrence as frivolous and vexatious. (*Collard v. Roo*, 4 De G. & J. 525.)

What Act
extends to.

The Dower Act extends to lands of gavelkind tenure (*Farley v. Bonham*, 2 J. & H. 177), but not to copyholds (*Powdrell v. Jones*, 2 S. & G. 407), or to freebench. (*Smith v. Adams*, 5 De G. M. & G. 7.)

Fry v. Noble.

Where property, before 1834, was conveyed to the husband, who was then married to a former wife, to the usual uses to bar dower, with a declaration that his present or any future wife should not be entitled to dower, it was held that his widow, whom he married after the 1st January, 1834, was entitled to dower. (*Fry v. Noble*, 20 Beav. 598; 7 De G. M. & G. 687; *Clarke v. Franklin*, 4 K. & J. 266.)

appointment and conveyance hereinbefore respectively contained, shall operate and enure, To SUCH USES as the said C. D. by any deed or deeds shall from time to time appoint, AND in default of and until such appointment, and so far as any such appointment shall not extend, To THE USE of the said C. D. during his life without impeachment of waste, AND AFTER the determination of that estate by any means in his lifetime, To THE USE of the said E. F., during the life of the said C. D., IN TRUST for the said C. D. AND AFTER the determination of the estate so limited to the said E. F. as aforesaid, To THE USE of the said C. D. in fee simple.

IN WITNESS, &c.

APPOINTMENT
AND CONVEY-
ANCE TO USES
TO BAR DOWER.

Declaration
that appoint-
ment and con-
veyance shall
enure to uses
to bar dower
in favour of
purchaser.

No. IV.

APPOINTMENT and CONVEYANCE of FREEHOLDS to a PURCHASER in FEE.

APPOINTMENT
AND CONVEY-
ANCE IN FEE.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part (*Recite conveyance to uses to bar dower, and agreement for sale as in last precedent*): NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c., supra, p. 225*), the said A. B., as beneficial owner, in exercise of the power for this purpose given to him by the hereinbefore recited indenture and of all other powers (if any) him hereunto enabling, hereby appoints and hereby also conveys unto the said C. D. ALL, &c. (*parcels*): To HOLD the same unto and to the use of the said C. D. in fee simple (*add acknowledgment of right to production of documents and undertaking for safe custody if applicable, supra, p. 226*).

Parties.

Vendor con-
veys to pur-
chaser in fee.

IN WITNESS, &c.

No. V.

CONVEYANCE
OF FREEHOLDS
SUBJECT TO
LEASE FOR
99 YEARS.

CONVEYANCE of FREEHOLDS *subject to a LEASE for*
NINETY-NINE YEARS.

Parties.

Recite lease
by vendor for
ninety-nine
years.

Agreement for
sale of heredi-
taments, sub-
ject to lease.
Conveyance
of heredita-
ments,

together with
benefit of rent,
&c. reserved
by lease.

To purchaser
in fee, subject
to lease.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part: WHEREAS by an indenture dated, &c., and made between (*parties*), the hereditaments hereinafter described were demised by the said A. B. unto the said E. F., his executors, administrators, and assigns, for the term of ninety-nine years, from the — day of — then last past, at the yearly rent of £—, and subject to the covenants and conditions therein contained, and on the part of the lessee to be observed and performed: AND WHEREAS the said A. B. hath agreed to sell to the said C. D. the said hereditaments subject to the said lease at the price of £—: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*) the said A. B., as beneficial owner, hereby conveys unto the said C. D., ALL those pieces or parcels of land situate, &c., and bounded, &c., and the ground plot whereof is delineated in the plan drawn in the margin of the first skin of these presents: AND all the messuages or dwelling-houses and other erections which have been erected and are now standing on the said pieces or parcels of land or some portions thereof: TOGETHER WITH the rent reserved by the said indenture of lease and the benefit of the lessee's covenants therein contained: To HOLD the same (subject to the said indenture of lease and the term thereby granted), unto and to the use of the said C. D. in fee simple.

IN WITNESS, &c.

No. VI.

CONVEYANCE of FREEHOLD HOUSES *subject to numerous* OF FREEHOLD
LEASES at GROUND RENTS. GROUND RENTS

THIS INDENTURE, made the — day of —, BETWEEN Parties.

A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part: WHEREAS the said A. B. is seised in fee simple of the hereditaments described in the first column of the schedule hereto, subject to the several indentures of lease mentioned in the second column of the said schedule, by which indentures the said hereditaments were demised to the several persons named in the third column of the said schedule for the several terms of years and at the yearly rents mentioned in the fourth and fifth columns of the said schedule, and subject to the covenants and conditions in the said indentures respectively contained and on the lessees' part to be observed and performed:

Recital of
vendor's
seisin.

AND WHEREAS the said A. B. has agreed to sell to the said C. D. the said hereditaments subject to the said leases at the price of £—: NOW THIS INDENTURE WITNESSETH

Agreement for
sale.

that in pursuance of the said agreement and in consideration of the sum of £— paid to the said A. B. by the said C. D. on or before the execution of these presents (*the receipt, &c.*), the said A. B., as beneficial owner, hereby conveys unto the said C. D. ALL THOSE pieces or parcels of ground, messuages, and hereditaments described in the first column of the schedule hereto, and all other (if any) the hereditaments comprised in the several indentures of lease mentioned in the second column of the said schedule, TOGETHER WITH the rents reserved by the said indentures of lease, and the benefit of the covenants and conditions therein respectively contained, and on the lessees' part to be observed and performed: To HOLD the same (subject to the said indentures of lease and the terms of years thereby respectively created) unto and to the use of the said C. D. in fee simple.

Witnessing
part.
Considera-
tion.

Conveyance
by vendor to
purchaser.

Parcels.

IN WITNESS, &c.

Habendum to
purchaser in
fee subject to
leases.

OF FREEHOLD
GROUND RENTS.

THE SCHEDULE ABOVE REFERRED TO.

Description of Property.	Lease.	Lessee.	Term.	Rent.
1. All that piece or parcel of ground, &c. (<i>describing it as in lease</i>), and the messuage or dwelling-house erected thereon, now known as, &c.	Indenture dated, &c., and made between (<i>state date and parties</i>).	G. H.	99 years, computed from, &c.	£—
2. All that, &c. -	Indenture, &c. (<i>as above</i>).	J. K.	99 years, computed from, &c.	£—

No. VII.

CONVEYANCE
OF REVERSION
EXPECTANT
ON LEASE TO
LESSEE.

CONVEYANCE of a REVERSION EXPECTANT on a LEASE
to the LESSEE who PURCHASES under an OPTION of
PURCHASE given to him BY the LEASE.

Parties.

Recite lease.

That lessee has
signified his
desire to
purchase.

Witnessing
part.

Lessor conveys
reversion to
lessee in fee.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part (*Recite lease from A. B. to C. D. with power to lessee to purchase for the sum of £—*); AND WHEREAS the said C. D. has signified to the said A. B. his desire to purchase the reversion and inheritance in fee simple of the hereditaments comprised in the said indenture of lease expectant on the term thereby granted at the price of £—: NOW THIS INDENTURE WITNESSETH, that in pursuance of the provision in this behalf contained in the hereinbefore recited indenture of lease as aforesaid, and in consideration, &c. (*the receipt, &c.*), the said A. B., as beneficial owner, hereby conveys and releases unto the said C. D., ALL, &c. (*parcels*): To HOLD the same unto and to the use of the said C. D. in fee simple, To the END and intent that the said term of — years, granted by the hereinbefore recited indenture of lease, may be merged and extinguished in the reversion and inheritance of the said premises.

IN WITNESS, &c.

No. VIII.

DEED of COVENANT to surrender a COPYHOLD ESTATE.

COPYHOLDS.

THIS INDENTURE, made the — day of —, BETWEEN Parties.
 A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part: WITNESSETH, that in consideration, &c. (*the receipt, &c., supra*, p. 225), the said A. B., as Witnessing part.
 beneficial owner (*e*), hereby covenants with the said C. D., that Consideration.
 he the said A. B. will forthwith, at the cost of the said C. D., Vendor covenants to surrender
 surrender or cause to be surrendered into the hands of the lord of the manor of —, in the county of —, according to the custom of the said manor, ALL, &c. (*parcels*), To THE USE of copyholds to purchaser in fee.
 the said C. D., in customary fee simple, at the will of the lord of the said manor, according to the custom of the said manor, at and under the rents, suits, and services therefor due and of right accustomed.

IN WITNESS, &c.

No. IX.

SURRENDER out of COURT of COPYHOLDS to a PURCHASER.

SURRENDER OF COPYHOLDS.

The MANOR of —, } BE IT REMEMBERED, that on
 in the county of — } this — day of —, A. B., of, &c.
 (*vendor*), comes before L. M., of, &c., steward of the manor out of court, and in consideration of the sum of £— to him paid by Consideration.
 C. D., of, &c. (*purchaser*), surrenders into the hands of the Surrender of copyholds
 lord of the manor, by the hands and acceptance of his said steward, according to the custom of the manor, ALL, &c. (*parcels*): To THE USE of the said C. D. (*f*), his heirs and to purchaser in fee.

(*e*) The interpretation clause in the Conveyancing Act, 1881, provides that the term "conveyance" shall include "covenant to surrender." It follows that if the vendor as beneficial owner covenants to surrender, covenants for title will be implied.

(*f*) The 51st section of the Conveyancing Act, 1881, rendering unnecessary the use of the word "heirs" in the limitation of an estate in fee simple, only applies to such a limitation in a deed.

SURRENDER OF
COPTHOLDS.

assigns for ever, at the will of the lord, according to the custom of the manor, at and under the rents, suits, and services therefor due and of right accustomed (*g*).

This surrender was taken and accepted
the day and year above written by
me.

Signed L. M. (*steward*),
Steward of the Manor.

No. X.

ASSIGNMENT OF
LEASEHOLDS.

ASSIGNMENT of a LEASEHOLD MESSUAGE to a PURCHASER (*h*).

Recite lease.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part: WHEREAS by an indenture of lease, dated the — day of —, and made between G. H., of the one part, and the said A. B., of the other part, ALL that mesuage or tenement, &c. (*parcels as described in the lease*) (*i*), were demised by the said G. H. unto the said A. B., his executors, administrators, and assigns, from the — day of —, then last past, for the term of — years, at the yearly rent of £—, and subject to the covenants and conditions in the said indenture

(*g*) The lord of the manor cannot be compelled to accept a surrender to such uses as the purchaser shall appoint, and in default of and until appointment to the use of the purchaser in fee. (*Flack v. Master, &c. of Downing College, 13 C. B. 945.*)

Proper form of assignment of leaseholds to a married woman.

(*h*) If the purchaser is a married woman, she will be described as "C. D., wife of E. D.," and it will be stated that the purchase-money is paid out of her separate property. In other respects the form will be the same as No. X., *supra*, substituting "she" for "he" and "her" for "him," when necessary.

Proper form of lease to a married woman.

It is also to be observed that a lease to a married woman will be in the same form as a lease to a man, substituting "she" for "he" and "her" for "him" when necessary.

(*i*) The recital of the indenture of lease should set forth the parcels as they are therein described. If the property at the date of the assignment is known by a different description, or any buildings have been erected on the premises since the lease, so as to require notice in the operative part, this should be done by way of addition to the old description.

of lease contained, and on the part of the lessee to be observed and performed: AND WHEREAS the said A. B. hath agreed to sell to the said C. D. the messuage and premises comprised in the said indenture of lease for the residue now unexpired of the said term of — years, subject to the said rent, covenants, and conditions, at the price of £—: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—, to the said A. B. paid by the said C. D. on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges), the said A. B. as beneficial owner, hereby assigns (*j*) unto the said C. D. THE messuage and premises comprised in and demised by the hereinbefore recited indenture of lease; To HOLD the same unto the said C. D. (*k*) for all the residue now unexpired of the said term of — years, subject to the rent reserved by the said indenture, and the covenants and conditions in the same indenture contained, and which henceforth on the part of the lessee, ought to be observed and performed; AND THE said C. D. (*l*) hereby covenants with the said A. B. that the said C. D., his executors, administrators, and assigns, will during the residue of the said term pay the rent reserved by the said indenture of lease, and observe and perform the covenants and conditions therein contained, and which henceforth on the lessee's part ought to be observed and performed,

ASSIGNMENT OF
LEASEHOLDS.

Agreement
for sale.

Assignment of
parcels in lease
for residue of
term.

Subject to
rent and
observance
of lessee's
covenants.

Covenant by
purchaser to
pay rent and
observe cove-
nants in lease.

(*j*) According to the interpretation clause in the Conveyancing Act, 1881, the term "convey" is made to include every kind of assurance—even a covenant to surrender. But this does not mean that "convey" shall have this extended meaning in any documents other than the Act, and although no doubt it would now, as it would have been before the Act, be operative to pass leaseholds, the word "assigns" remains as before the more correct and appropriate term.

When the
word
"convey"
should be used.

(*k*) It was formerly usual in an assignment of leaseholds and other personal property to add the words "his executors, administrators, and assigns," after the name of the assignee, not because such words were essential, but by analogy to a limitation of freeholds to "heirs." As the word "heirs" is now unnecessary under the recent Act, and is accordingly discontinued in this edition, the words "his executors, administrators, and assigns," are omitted also.

In assignment
of leaseholds,
words "his
executors,
administra-
tors, and
assigns," now
omitted.

(*l*) The words "for himself, his heirs, executors, and administrators," are now unnecessary. They were formerly inserted, because specialty debts, where the heir was expressed to be bound, had a priority over other debts in the administration of assets, but this is no longer the case; and now, by the 59th section of the Conveyancing Act, 1881, it is provided as to covenants made or implied after the commencement of the Act, that a covenant, though not expressed to bind the heirs, shall operate to bind the heirs and real estate as well as the executors and administrators of the person making the same as if heirs were expressed.

In covenants
the words
"for himself,
his heirs," &c.,
no longer
necessary.

**ASSIGNMENT OF
LEASEHOLDS.**

and will keep indemnified the said A. B. and his estate and effects from and against all claims and demands on account of the same (m).

IN WITNESS, &c.

No. XI.

**ASSIGNMENT OF
PROPERTY
COMPRISED IN
SEVERAL
LEASES.**

**ASSIGNMENT of Property comprised in SEVERAL LEASES
to a PURCHASER for the residue of the SEVERAL TERMS.**

Parties.

**Agreement for
sale of here-
ditaments
comprised in
before-men-
tioned leases.**

**Witnessing
part.
Consideration.**

**Vendor assigns
hereditaments
comprised in
recited leases**

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part (*recite several leases to A. B.*): AND WHEREAS the said A. B. hath agreed to sell to the said C. D. the premises comprised in the hereinbefore recited indentures of lease, for all the unexpired residue of the said several terms of years respectively, subject to the rents and lessee's covenants thereby and therein respectively reserved and contained, at the price of £—: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £— to the said A. B. paid by the said C. D. on or before the execution of these presents (*the receipt, &c.*), the said A. B., as beneficial owner, hereby assigns unto the said C. D., ALL the hereditaments and premises comprised in and demised by the hereinbefore recited indentures of lease respectively, including all buildings which since the date of the said respective indentures of lease have been erected on

**When pur-
chaser bound
to covenant
with assignor.**

**Original lessee
has right to be
indemnified.**

(m) An assignee of a leasehold interest is not liable for the rent and covenants contained in the lease after he has executed an assignment of the lease to another person; so that if the vendor of a leasehold interest is not the original lessee, but an assignee, or the representative of an assignee, he is not entitled to a covenant from the purchaser for the payment of the rent and the observance of the covenants, unless he, the vendor, is under the obligation of a covenant for the payment and observance of such rent and covenants.

In the absence of any express covenant, the original lessee has a legal right to be indemnified by the holder of the lease for the time being against breaches of covenant committed during his tenancy, whether such holder takes by assignment directly from the lessee, or after mesne assignments. (*Moule v. Garrett, L. R. 7 Exch. 101.*)

the land comprised therein respectively, or on any part thereof respectively; To HOLD the same unto the said C. D., for all the residue now unexpired of the said several terms of years for which the said hereditaments and premises were granted by the said indentures of lease respectively as aforesaid, subject to the said several rents reserved by the said indentures of lease respectively, and the covenants and conditions in the same indentures respectively contained, and which henceforth on the part of the lessee ought to be observed and performed: AND THE SAID C. D. hereby covenants with the said A. B., that the said C. D., his executors, administrators, and assigns, will, during the said terms respectively, pay the rents reserved by the said indentures of lease respectively, and observe and perform the covenants and conditions therein respectively contained and which henceforth on the lessee's part ought to be observed and performed, and will keep indemnified the said A. B. and his estate and effects from and against all claims and demands on account thereof respectively.

IN WITNESS, &c.

ASSIGNMENT
OF PROPERTY
COMPRISED
IN SEVERAL
LEASES.

to purchaser
for residue of
several terms.

Covenant by
purchaser

to pay rent
and perform
covenants, and

to indemnify
vendor there-
from.

No. XII.

ASSIGNMENT of LEASEHOLDS by EXECUTORS.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c., and C. D., of, &c. (*executors*), of the one part, and E. F., of, &c. (*purchaser*), of the other part. (*Recite lease to L. M., &c.*): AND WHEREAS the said L. M. died on the — day of —, having made his will dated the — day of —, and thereby appointed the said A. B. and C. D. executors thereof, who duly proved the same, on the — day of —, in the Principal Probate Registry of the High Court of Justice [*or, as the case may be, "in the Probate Registry at — of the High Court of Justice"*]: AND WHEREAS the said A. B. and C. D. have agreed to sell to the said E. F. the premises comprised in the hereinbefore recited indenture of lease for the residue of the said term of — years, subject to the said

ASSIGNMENT OF
LEASEHOLDS
BY EXECUTORS.

Parties.
Recite inden-
ture of lease.

Will of lessee
appointing
vendors
executors.

Death of
testator and
probate of his
will.

Agreement
for sale.

**ASSIGNMENT OF
LEASEHOLDS
BY EXECUTORS.**

Witnessing
part.

Vendors as
executors
assign pre-
mises com-
prised in lease,
to purchaser
for remainder
of term.

Covenant by
purchaser to
pay rent and
observe cove-
nants in lease.

rent, covenants, and conditions, at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— paid by the said E. F. to the said A. B. and C. D. as the personal representatives of the said L. M. deceased (*the receipt, &c.*), the said A. B. and C. D. as such personal representatives as aforesaid hereby assign unto the said E. F., ALL the hereditaments and premises comprised in and demised by the hereinbefore recited indenture of lease: To HOLD the same unto the said E. F., for all the residue now unexpired of the said term of —— years, subject to the rent reserved by the said indenture of lease, and the covenants and conditions in the same indenture contained, and which henceforth on the part of the lessee ought to be observed and performed: AND THE SAID E. F. hereby covenants with the said A. B. and C. D. that the said E. F., his executors, administrators, and assigns, will during the said term pay the rent reserved by the said indenture of lease, and observe and perform the covenants and conditions therein contained, and which henceforth on the lessee's part ought to be observed and performed, and will keep indemnified the said A. B. and C. D., and each of them, and the estate and effects of the said L. M., deceased, from and against all claims and demands on account thereof.

IN WITNESS, &c.

No. XIII.

**ASSIGNMENT
OF PART OF
LEASEHOLDS
WHERE RENT IS
APPORTIONED.**

ASSIGNMENT *of a Portion of LEASEHOLD PREMISES which are held under one LEASE at an entire RENT, the RENT being apportioned between the VENDOR and PURCHASER by mutual arrangement; CROSS POWERS OF DISTRESS AND ENTRY in case either makes default in the payment and observance of his proportion of the RENT and COVENANTS (n).*

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*pur-*

(n) This deed should be executed in duplicate.

chaser), of the other part (*Recite lease to E. F. for seventy-eight years at yearly rent of £12, setting out the parcels as in the lease,—also assignment of lease by E. F. to A. B. for residue of term*): AND WHEREAS the said A. B. hath agreed to sell to the said C. D. the hereditaments intended to be hereby assigned (being part of the hereditaments demised by the hereinbefore recited indenture of lease), for the residue of the said term of seventy-eight years, at the price of £——: AND WHEREAS upon the treaty for the said sale it was agreed that the said C. D. should pay the yearly rent of £6 in respect of the hereditaments intended to be hereby assigned as his proportion of the said yearly rent of £12, and that the residue of the said yearly rent of £12 should be paid by the said A. B. in respect of the said demised premises not intended to be hereby assigned, and that the said parties respectively should enter into such covenants, and confer such mutual powers of distress and entry as are herein-after contained: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), THE said A. B., as beneficial owner, hereby assigns unto the said C. D., ALL, &c. (*here set out the particular parcels which are agreed to be sold*); To HOLD the same unto the said C. D., for all the residue now unexpired of the said term of seventy-eight years, subject to the payment of the yearly rent of £6 (being one moiety of the said rent of £12 reserved by the said recited indenture of lease), at the times, and in the manner appointed by the said indenture of lease for the payment of the whole rent thereby reserved, and subject to the covenants and conditions in the said indenture of lease contained, and on the part of the lessee to be observed and performed, so far only as the same relate to the premises hereby assigned: AND THE SAID C. D. hereby covenants with the said A. B. that the said C. D., his executors, administrators, and assigns, will at all times hereafter during the said term pay the said yearly rent of £6, part of the said yearly rent of £12 reserved by the said indenture of lease, and observe and perform all the covenants and conditions in the said indenture of lease contained, and which henceforth on the part of the lessee, ought to be observed and performed, so far as the same relate to the said premises hereby assigned, and will at all times hereafter keep indemnified the said A. B., his executors, administrators, and assigns, and his and their estate and effects, from the pay-

ASSIGNMENT
OF PART OF
LEASEHOLDS
WHERE RENT IS
APPORTIONED.

Recite lease
and assign-
ment.
Agreement
for sale of
part of pre-
mises com-
prised in lease.
Agreement
between
vendor and
purchaser as
to the appor-
tionment of
the rent.

Witnessing
part.
Consideration.

Assignment by
vendor of part
of premises
comprised in
lease to pur-
chaser for
residue of
term at appor-
tioned rent.

Covenant by
purchaser for
payment and
observance of
his proportion
of rent and
covenants.

**ASSIGNMENT
OF PART OF
LEASEHOLDS
WHERE RENT IS
APPORTIONED.**

Powers of distress and entry in respect of premises assigned, if default is made by purchaser in payment and observance of his proportion of rent and covenants.

Covenants by vendor for payment and observance of his proportion of rent and covenants.

Powers of distress and entry in respect of premises not assigned, if default is made by

ment of the said rent of £6, and the observance and performance of the said covenants and conditions relating to the said hereby assigned premises, and from all claims and demands on account of the same, or in anywise relating thereto: AND ALSO that in case the said A. B., his executors, administrators, or assigns, shall at any time or times hereafter pay any sum or sums of money, or sustain or incur any damages or expenses for or on account of the said yearly rent of £6, covenants, and conditions hereinbefore covenanted to be paid, observed, and performed by the said C. D. as aforesaid, or any of them, then and in every such case, and so often as the same shall happen, it shall be lawful for the said A. B., his executors, administrators, or assigns, to recover the same by distraining upon the premises hereby assigned, in like manner as landlords may distrain for rents reserved upon leases for years: AND ALSO (by way of additional remedy) to enter into and upon, and to hold all or any part of the premises hereby assigned, and to receive and take the rents and profits thereof for his and their own use until he or they shall thereby or otherwise be fully paid and satisfied all and every such sum or sums of money, damages, and expenses as aforesaid: AND THE SAID A. B. hereby covenants with the said C. D. that the said A. B., his executors, administrators, or assigns, will at all times during the said term pay the yearly rent of £6 (the residue of the said yearly rent of £12 reserved by the said indenture of lease), and observe and perform all the covenants and conditions in the said indenture of lease contained, and which henceforth on the part of the lessee ought to be observed and performed, so far as the same relate to the premises comprised in the said indenture of lease which are not hereby assigned, and will at all times hereafter keep indemnified the said C. D., his executors, administrators, and assigns, and his and their estate and effects, from the payment of the said rent of £6, and the observance and performance of the said covenants and conditions relating to the last-mentioned premises, and from all claims and demands whatsoever, on account of the same or in anywise relating thereto: AND ALSO that in case the said C. D., his executors, administrators, or assigns, shall at any time or times hereafter pay any sum or sums of money, or sustain or incur any damages, or expenses for or on account of the said yearly rent of £6,

covenants and conditions hereinbefore covenanted to be paid, observed, and performed by the said A. B. as aforesaid, or any of them, then and in every such case, and so often as the same shall happen, it shall be lawful for the said C. D., his executors, administrators, or assigns, to recover the same by distraining upon such part of the premises comprised in the said recited indenture of lease as is not assigned by these presents, in like manner as landlords may distrain for rents reserved upon leases for years: AND ALSO (by way of additional remedy) to enter into and upon, and to hold all or any part of the last-mentioned premises, and receive and take the rents and profits thereof for his and their own use, until he or they shall thereby or otherwise be fully paid and satisfied all and every such sum or sums of money, damages, and expenses as aforesaid: And the said A. B., who retains the said indenture of lease, hereby acknowledges the right of the said C. D. to production and delivery of copies thereof and undertakes for the safe custody thereof.

ASSIGNMENT OF
PART OF
LEASEHOLDS
WHERE RENT IS
APPORTIONED.

vendor in
payment and
observance of
his proportion
of rent and
covenants.

IN WITNESS, &c.

No. XIV.

ASSIGNMENT to a PURCHASER of part of LEASEHOLD premises held under ONE LEASE, where the REMAINING part is sold at the same time to ANOTHER PURCHASER and the RENT is APPORTIONED between the two. The PURCHASER of the REMAINING part of the property joins in the ASSIGNMENT. The latter COVENANTS to pay his PROPORTION of the RENT, and to observe the COVENANTS in the lease as regards the PROPERTY PURCHASED by him, and confers POWERS of DISTRESS and ENTRY to secure the same.

ASSIGNMENT OF
PART OF
LEASEHOLDS
WHERE RE-
MAINING PART
IS SOLD TO
ANOTHER
PURCHASER.

THIS INDENTURE, made the — day of —, BETWEEN Parties.
A. B., of, &c. (vendor), of the first part, E. F., of, &c. (purchaser
of the remaining part), of the second part, and C. D., of, &c.

ASSIGNMENT OF
PART OF
LEASEHOLDS
WHERE RE-
MAINING PART
IS SOLD TO
ANOTHER
PURCHASER.

Recite agree-
ment for sale.

Assignment to
purchaser at
apportioned
rent.

Recite that
vendor has
sold remaining
part of pre-
mises com-
prised in lease
to E. F.

Agreement
that E. F.
should enter
into covenants
and confer
powers of dis-
tress and
entry.

Covenants by
E. F. and
powers of dis-
tress and entry
accordingly.

(*purchaser*), of the third part (*Recite lease*): AND WHEREAS the said A. B. has agreed to sell to the said C. D. the messuage and hereditaments intended to be hereby assigned (being part of the premises comprised in the said indenture of lease) for the residue of the said term, subject to the apportioned rent of £6, at the price of £——. Now, &c. (*assignment to purchaser; covenants by C. D. with A. B. to pay rent and observe covenants in lease as regards the premises assigned as in last Precedent, suprd, pp. 239, 240*): AND WHEREAS the said A. B. has sold the remainder of the premises comprised in the said indenture of lease to the said E. F., subject to the payment of the yearly rent of £——, being the remainder of the said rent reserved by the said indenture of lease, and the same has been or is intended to be assigned to the said E. F. by an indenture bearing even date with these presents, and made between the said A. B., of the first part, the said C. D., of the second part, and the said E. F., of the third part: AND WHEREAS it has been agreed that the said E. F. shall enter into the covenants and confer such powers of distress and entry as are hereinafter expressed: AND THIS INDENTURE ALSO WITNESSETH that in pursuance of the said agreement in this behalf, and in consideration of the premises, the said E. F. hereby covenants with the said C. D. (*o*), that, &c. (*covenant to pay proportion of rent, and observe covenants in lease, and power of distress and entry, the same as the covenants by vendor and the powers following the same in the last Precedent, suprd, pp. 240, 241, substituting throughout "E. F." for "A. B.," and the words "so far as the same relate to the premises assigned to the said E. F. by the said indenture bearing even date herewith," for the words "so far as the same relate to the premises comprised in the said indenture of lease which are not hereby assigned"*).

IN WITNESS, &c.

Covenant to
bind execu-
tors, &c.

(*o*) The 58th section of the Conveyancing Act, 1881, provides that a covenant relating to land not of inheritance, shall be deemed to be made with the covenantee, his executors, administrators, and assigns, and shall have effect as if executors, administrators, and assigns were expressed.

No. XV.

CONVEYANCE *of a LEASEHOLD ESTATE for LIVES (p).*

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*venditor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part: WHEREAS by an indenture dated the — day of —, and made between G. H., of the one part, and the said C. D., of the other part, ALL, &c. (*here set out the parcels as described in the lease*), were granted by the said G. H. unto the said A. B., his executors, administrators, and assigns, for the lives of — and —, and the life of the survivor of them, at the yearly rent of £5, and subject to the covenants and conditions therein contained, and on the part of the lessee, his executors, administrators, and assigns, to be observed and performed: AND WHEREAS the said A. B. hath agreed to sell to the said C. D. the hereditaments and premises comprised in the said recited indenture, for the lives and subject as aforesaid, at the price of £—: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £— to the said A. B. paid by the said C. D. (the receipt whereof the said A. B. hereby acknowledges), the said A. B., as beneficial owner, hereby conveys unto the said C. D., ALL the hereditaments and premises comprised in and granted by the said recited indenture: To HOLD the same unto and to the use of the said C. D. for the lives of the said — and —, and the life of the survivor of them, subject to the rent and the covenants and condi-

CONVEYANCE
OF A LEASE-
HOLD ESTATE
FOR LIVES.

Parties.

Recite lease
for lives.Agreement for
sale of lease.Conveyance
of parcelsto purchaser
for lives of
cestuis que vie.

(p) An estate *pour autre vie* may be limited by the original grant, or by any subsequent assurance thereof, either to the grantee and his heirs, in which case on his death intestate the heir will take as special occupant, and the property will be chargeable in his hands as assets by descent, as in the case of freehold land in fee simple; or to the grantee, his executors and administrators, in which case the executor or administrator will take by special occupancy, or to the grantee without any words of limitation, in which case it goes to the executor or administrator by virtue of the Wills Act (1 Vict. c. 26), s. 6, and an estate *pour autre vie* coming to an executor or administrator by reason of a special occupancy or otherwise, is made assets in his hands, to be applied in the same manner as the personal estate of the testator or intestate. If an estate *pour autre vie*, either by the original grant or by any subsequent assurance thereof, is limited to the grantee, his heirs, executors, and administrators, the heir, and not the executor, will take as special occupant. (Atkinson v. Baker, 4 T. R. 229.)

Estates pour
autre vie.

CONVEYANCE
OF A LEASE-
HOLD ESTATE
FOR LIVES.

Covenant by
purchaser to
pay rent and
perform cove-
nants, and
indemnify
vendor there-
from.

tions reserved by and contained in the said recited indenture, and on the part of the grantee to be paid, observed, and performed: AND THE SAID C. D. hereby covenants with the said A. B., that the said C. D., his executors, administrators, and assigns, will pay the rent reserved by the said indenture of lease and observe and perform the covenants and conditions therein contained, and which henceforth on the lessee's part ought to be observed and performed, and will keep indemnified the said A. B., and his estate and effects, from and against all claims and demands on account of the same.

IN WITNESS, &c.

No. XVI.

ASSIGNMENT OF
LEASEHOLDS
AND OF
COVENANT
FOR RENEWAL.

ASSIGNMENT of LEASEHOLDS *for the residue of a TERM DETERMINABLE on LIVES, and of the benefit of a COVENANT for PERPETUAL RENEWAL.*

Parties.

Recite lease to
vendor for a
term deter-
minable on
lives,

with covenant
for perpetual
renewal.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part: WHEREAS, by an indenture, dated, &c., and made between X. Y., of the one part, and the said A. B., of the other part (*here recite lease of premises hereinafter described for 99 years, from the — day of —, if E., F., and G., or any of them should so long live, and the covenant for renewal contained in the lease.—Death of E.*): AND WHEREAS, by an indenture, dated the — day of —, and made between the said X. Y., of the one part, and the said A. B., of the other part, in pursuance of the aforesaid covenant and in consideration of the surrender of the said recited lease, and in consideration of the sum of £— to the said X. Y., paid by the said A. B., the said X. Y. demised unto the said A. B., ALL (*here describe the parcels as set forth in this lease*), to hold the same unto the said A. B., his executors, administrators, and assigns, for the term of 99 years, from the — day of —, if F. and the said G. and H., or any of them, should so long live, at the yearly rent of £—, and subject to the covenants and conditions in the said indenture of lease now in recital contained, and on the lessee's part to be

observed and performed: AND by the indenture now in recital, the said X. Y. covenanted for himself, his heirs, executors, administrators, and assigns, with the said A. B., his executors, administrators, and assigns, that in case of the decease of such one of them the said F., G., and H., as should first die, the said A. B., his executors, administrators, or assigns, should within six calendar months from the dropping of such life give to the said X. Y., his heirs or assigns, or leave at his or their usual or last-known place of abode, a notice in writing, requesting a new lease of the premises for 99 years if such two of them the said F., G., and H., as should be then living, and one other person to be nominated in that behalf by the person or persons giving or leaving such notice, or any of them should so long live, and should within the said period pay the sum of £—— to the said X. Y., his heirs or assigns, by way of fine, for the renewal of such lease, then and in such case the said X. Y., his heirs or assigns, would within such period as aforesaid, at the request and cost of the said A. B., his executors, administrators, or assigns, grant unto him or them on the surrender of the lease now in recital, a new lease of the said premises for and determinable on the lives aforesaid according to such notice upon the same terms and under and subject to the same covenants, provisions, and declarations as were contained in the lease now in recital, including the covenant for renewal: AND WHEREAS the said A. B. hath agreed with the said C. D. for the sale to him of the premises comprised in the said recited indenture of lease of the —— day of ——, for the residue of the said term of 99 years created therein by the same indenture as aforesaid, and also of the full benefit of the covenant in the same indenture contained for securing the perpetual renewal of the said lease on the dropping of lives as aforesaid, subject to the said rent and covenants, at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. paid by the said C. D., &c. (*the receipt, &c.*) the said A. B., as beneficial owner, hereby assigns unto the said C. D., ALL the messuages and premises comprised in and demised by the said recited indenture of the —— day of ——: TOGETHER with the full benefit and advantage of the covenant contained in the said last-mentioned indenture for securing the perpetual renewal of the said lease on the dropping of lives as

ASSIGNMENT OF
LEASEHOLDS
AND OF
COVENANT
FOR RENEWAL.

Agreement
for sale.

Considera-
tion.

Vendor
assigns.
First.

Leasehold
premises.
Secondly.
Benefit of
covenant for
renewal.

**ASSIGNMENT OF
LEASEHOLDS
AND OF
COVENANT
FOR RENEWAL.**

To hold pre-
mises first
assigned to
purchaser for
remainder of
term deter-
minable on
the lives,
and benefit of
covenant for
renewal to
purchaser
absolutely.

Covenant by
purchaser to
pay rent and
perform cove-
nants, and
keep vendor
indemnified
therefrom

therein recited : To HOLD the same unto the said C. D. for all the residue now unexpired of the said term of 99 years created therein by the said last-mentioned indenture, determinable as aforesaid, and for all other the estate and interest therein of the said A. B., subject to the said yearly rent of £—, and the covenants and conditions in the same indenture contained, and on the lessee's part to be observed and performed. AND THE SAID C. D. hereby covenants with the said A. B., that the said C. D., his executors, administrators, and assigns, will during the said term determinable as aforesaid pay the yearly rent reserved by the said indenture, and observe and perform the covenants and conditions therein contained and on the lessee's part to be observed and performed, and will keep indemnified the said A. B., and his estate and effects, from all claims and demands on account thereof.

IN WITNESS, &c.

No. XVII.

**CONVEYANCE
OF FREEHOLDS
AND COVENANT
TO SURRENDER
COPYHOLDS.**

**CONVEYANCE of FREEHOLDS and COVENANT for the
SURRENDER of COPYHOLDS (q).**

Parties.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part : WITNESSETH, that in consideration, &c. (*the receipt, &c.*), (*Conveyance of freeholds to C. D., in fee simple, supra, p. 225*) : AND THIS INDENTURE ALSO WITNESSETH that for the consideration aforesaid (*Covenant for the surrender of the copyhold hereditaments to the use of C. D., in customary fee simple, supra, p. 233*) : AND IT IS HEREBY DECLARED, that for the purpose of the Stamp Act (q) the sum

Declaration as
to apportion-
ment of

Stamp on this
deed.

(q) This deed will carry an *ad valorem* stamp on the sum which is declared to be the price of the freeholds, and the surrender of the copyholds will carry an *ad valorem* stamp on the sum which is declared to be the price of the copyhold portion. See 33 & 34 Vict. c. 97, s. 74.

When the property to be sold is freehold and an equitable estate in copyhold, both properties will pass by the deed, so that the deed will be stamped with an *ad valorem* duty on the entire purchase-money.

of £——, part of the said purchase-money, shall be considered the price of the said freehold hereditaments, and the sum of £——, being the remainder of the said purchase-money, the price of the said copyhold hereditaments.

IN WITNESS, &c.

CONVEYANCE
OF FREEHOLDS
AND COVENANT
TO SURRENDER
COPYHOLDS.

purchase-
money for
purpose of
Stamp Act.

No. XVIII.

CONVEYANCE of FREEHOLDS and ASSIGNMENT of LEASEHOLDS.

CONVEYANCE
OF FREEHOLDS
AND
LEASEHOLDS.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part: WHEREAS the said A. B. is seised in fee simple of the freehold hereditaments hereinafter described and intended to be hereby conveyed: AND WHEREAS (*Recite lease to A. B., supra*, p. 234): AND WHEREAS the said A. B. has agreed to sell to the said C. D. the said freehold and leasehold hereditaments and premises, subject as to the said leasehold premises to the said rent, covenants and conditions, at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B., as beneficial owner, hereby conveys unto the said C. D., ALL, &c. (*parcels*): To HOLD the same unto and to the use of the said C. D. in fee simple: AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B., as beneficial owner, hereby assigns unto the said C. D., ALL the hereditaments and premises comprised in and demised by the hereinbefore recited indenture of lease of the —— day of ——: To HOLD the same unto the said C. D., for all the residue now unexpired of the said term of —— years, subject to the rent and the covenants and conditions by and in the said indenture of lease reserved and contained, and which henceforth on the part of the lessee are or ought to be paid, observed, and performed. (*Covenant by purchaser to pay rent and perform covenants, and indemnify vendor therefrom, supra*, p. 235.)

IN WITNESS, &c.

Parties.

Recite seisin
of freeholds
and lease.

Agreement
for sale.

First witness-
ing part.

Conveyance of
freeholds.

Second wit-
nessing part.

Assignment of
leaseholds.

No. XIX.

CONVEYANCE
OF FREE-
HOLDS,
COVENANT TO
SURRENDER
COPYHOLDS,
AND ASSIGN-
MENT OF
LEASEHOLDS.

CONVEYANCE of FREEHOLDS, COVENANT to SURRENDER
COPYHOLDS, and ASSIGNMENT of LEASEHOLDS, the PUR-
CHASER having MARRIED BEFORE 1834.

Parties.

Recite seisin
of freeholds
and copyholds.

Recite lease.
Agreement
for sale.

Vendor con-
veys freeholds,

to uses to bar
dower in
favour of
purchaser.

Vendor
covenants to
surrender
copyholds to
purchaser.

Vendor
assigns lease-
holds to
purchaser.

Apportion-
ment of
purchase-
money for
purpose of
Stamp Act.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*vendor*), of the first part, C. D., of, &c. (*purchaser*), of the second part, and E. F., of, &c. (*dower trustee*), of the third part: WHEREAS the said A. B. is seised in fee simple of the freehold hereditaments hereinafter described, and is seised or entitled in customary fee simple of or to the copyhold hereditaments hereinafter described according to the custom of the manor of —, of which the same are holden, subject to the customary rents, suits, and services: AND WHEREAS (*Recite lease, suprd, p. 234*): AND WHEREAS the said A. B. has agreed to sell to the said C. D. the said freehold, copyhold, and leasehold hereditaments and premises, subject as to the said copyhold hereditaments to the customary rents, suits, and services, and as to the said leasehold premises to the said rent, covenants and conditions, at the price of £3000: NOW THIS INDENTURE WITNESSETH that in consideration of the sum of £3000, paid by the said C. D. to the said A. B., &c. (*the receipt, &c.*), THE said A. B., as beneficial owner, hereby conveys unto the said C. D. ALL (*parcels*): To HOLD the same unto the said C. D. in fee simple: To SUCH uses, &c. (*Uses to bar dower, suprd, p. 229*): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid (*Covenant by A. B. for the surrender of the copyholds to the use of C. D., in customary fee simple; suprd, p. 233*): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid (*Assignment of leaseholds to C. D., suprd, p. 235*). (*Covenant by purchaser to pay rent and observe covenants, and indemnify vendor therefrom, suprd, p. 235*): AND IT IS HEREBY DECLARED, that for the purpose of the Stamp Act the sum of £2000, part of the said purchase-money, shall be considered the price of the said freehold and leasehold premises, and the sum of £1000, the remainder of the said purchase-money, the price of the said copyhold premises.

IN WITNESS, &c.

No. XX.

CONVEYANCE *by a HUSBAND and WIFE married before*
the 1st January, 1883, of FREEHOLDS of the WIFE
 ACQUIRED *by her BEFORE that DATE (r).*

CONVEYANCE
OF WIFE'S
FREEHOLDS.

THIS INDENTURE, made the — day of —, BETWEEN Parties.
 A. B., of, &c., and C. his wife (*vendors*), of the one part, and
 E. F., of, &c. (*purchaser*), of the other part: WHEREAS X. Y.,
 late of, &c., died on the — day of —, 1880, having made Recite will
 his will, dated the — day of —, whereby he devised the devising here-
 hereditaments hereinafter described unto the said C. B. in fee ditaments to
 simple: AND WHEREAS the said A. B. and C. his wife, have Agreement wife.
 agreed to sell to the said E. F. the said hereditaments at the for sale by
 price of £—: NOW THIS INDENTURE WITNES- husband
 SETH, that in consideration of the sum of £— to the said and wife.
 A. B. and C. his wife paid by the said E. F. on or before the
 execution of these presents (*the receipt, &c.*), THE said A. B. and Conveyance
 C. his wife as beneficial owners (*s*), do and each of them doth by husband
 by this deed duly acknowledged by the said C. B., pursuant to and wife,
 the statute in that behalf, convey unto the said E. F. ALL, &c. to purchaser.
 (*parcels*): To HOLD the same unto and to the use of the said
 E. F. in fee simple.

IN WITNESS, &c.

No. XXI.

CONVEYANCE *by a MARRIED WOMAN under a POWER (t).*

CONVEYANCE
BY MARRIED
WOMAN
UNDER POWER.

THIS INDENTURE, made the — day of —, BETWEEN Parties.
 C. B., the wife of A. B., of, &c. (*appointor*), of the one part,

(r) This deed must be acknowledged by the wife pursuant to the 3 & 4 Will. 4, c. 74.

(s) See sect. 7, sub-sect. 3, of the Conveyancing Act, 1881.

(t) This deed need not be acknowledged by the appointor, nor can the concurrence of the husband be required.

CONVEYANCE
BY MARRIED
WOMAN
UNDER POWER.

Recite will and
agreement for
sale.

Witnessing
part.

Considera-
tion.

Wife appoints

parcels

to purchaser
in fee.

and E. F., of, &c. (*appointee*), of the other part (*Recite will of X. Y., whereby the lands were devised to such uses as C. B. should, by deed, notwithstanding coverture, appoint—death of testator, and probate of his will—agreement by C. B. with E. F. for sale*): NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said C. B. paid by the said E. F. on or before the execution of these presents (*the receipt, &c.*) the said C. B., as beneficial owner, in exercise of the power for this purpose given to her by the said will of the said X. Y. as aforesaid, and of all other powers (if any) her hereunto enabling, DOTH by this deed appoint, that ALL, &c. (*parcels*), shall henceforth go, remain, and be To THE USE of the said E. F. in fee simple.

IN WITNESS, &c.

No. XXII.

CONVEYANCE,
&c., BY A
WOMAN
MARRIED
AFTER THE
31ST OF
DECEMBER,
1882.

Parties.

Married
woman con-
veys parcels.

Vendor con-
veying as
beneficial
owner, liable
to statutory
covenants.

Covenant
by married
woman.

CONVEYANCE of FREEHOLDS, or COVENANT to SUR- RENDER COPYHOLDS, or ASSIGNMENT of LEASEHOLDS by a WOMAN MARRIED after the 31st December, 1882 (*u*).

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., the wife of H. B., of, &c., to whom she was married since the 31st day of December, 1882 (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part (*x*), WITNESSETH, that in consideration of the sum of £—— to the said A. B. paid by the said C. D. on or before the execution of these presents (*the receipt whereof the said A. B. hereby acknowledges*), the said A. B., as beneficial owner (*y*), (*the same as Precedent No. II.*

(*u*) See the Married Women's Property Act, 1882, ss. 2 and 5, and *supra*, p. 189. Under this precedent the vendor conveying as beneficial owner will be liable to the statutory covenants for title, in respect of her separate property.

(*x*) If the property is leasehold the lease and agreement for sale will be recited as in Precedent No. X., *supra*, pp. 234, 235.

(*y*) Every covenant, whether express or implied, which is entered into by a married woman after the 31st December, 1882, is deemed to be entered into by her with respect to and so as to bind her present and after-acquired separate property, and she may be sued thereupon accord-

supra, p. 225, as to freeholds, or No. VIII., *supra*, p. 233, as to copyholds, or No. X., *supra*, p. 234, as to leaseholds, substituting "she" for "he," and "her" for "him," when necessary).

IN WITNESS, &c.

CONVEYANCE,
&c., BY A
WOMAN
MARRIED
AFTER THE
31st OF
DECEMBER,
1882.

No. XXIII.

CONVEYANCE by a MARRIED WOMAN, who was MARRIED before the 1st of January, 1883, of FREEHOLDS ACQUIRED by her by DEVISE and INHERITANCE after that DATE (z).

CONVEYANCE
BY MARRIED
WOMAN
MARRIED
BEFORE 1883.

THIS INDENTURE, made the — day of —, BETWEEN A. B., the wife of H. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part: WHEREAS, G. H., late of —, deceased, made his will dated the — day of —, and thereby devised the hereditaments firstly hereinafter described unto and to the use of his daughter, the said A. B., in fee simple, and appointed L. M., of, &c., and N. O., of, &c., executors of his said will (*Death of testator in 1883, and probate of his will*): AND WHEREAS the said testator was at the time of his decease also seised of the hereditaments secondly hereinafter described for an estate of inheritance in fee simple in possession, but died intestate as to such last-mentioned hereditaments, leaving the said A. B., his daughter and only child, his sole heiress-at-law: AND WHEREAS the said A. B. hath agreed to sell to the said C. D. the hereditaments firstly and secondly hereinafter described at the price of £—. NOW THIS INDENTURE WITNESSETH that, in consideration of the sum of £— to the said A. B. paid by the said C. D. on or before the execution of these presents (the receipt whereof the said

Parties.

Recite will under which hereditaments firstly described were devised to the vendor.

Death of testator in 1883, and probate of his will. That testator was entitled also to hereditaments secondly described and died intestate as to the same.

That vendor was his daughter and only child.

Agreement by the married daughter to sell.

ingly as if she were a *feme sole* (Married Women's Property Act, 1882, ss. 1, 13). The covenant does not operate as an immediate specific charge on her separate estate, but it places the covenantee in a position to bring an action thereunder on the occasion of any breach, and obtain a judgment under which the separate estate may be taken in execution.

(z) See Married Women's Property Act, 1882, s. 5.

CONVEYANCE
BY MARRIED
WOMAN
MARRIED
BEFORE 1883.

The vendor
conveys
parcels
to purchaser
in fee.

A. B. hereby acknowledges) the said A. B. as beneficial owner hereby conveys unto the said E. F. FIRST, ALL, &c. (*describe the hereditaments devised by the will of G. H.*), AND SECONDLY, ALL, &c. (*describe the hereditaments to which the said A. B. had become entitled by intestacy as the heiress-at-law of G. H.*). To HOLD the same unto and to the use of the said E. F. in fee simple.

IN WITNESS, &c.

No. XXIV.

SURRENDER OF
COPYHOLDS
WHERE
VENDOR IS A
WOMAN MAR-
RIED BEFORE
1st JANUARY,
1883.

SURRENDER out of COURT of COPYHOLDS, where the VENDOR is a MARRIED WOMAN, and the Marriage has taken place before 1st JANUARY, 1883.

Surrender of
copyholds by
husband and
wife
to purchaser
in fee.

The Manor of —, } BE IT REMEMBERED, that on
in the county of — } this — day of —, A. B., of, &c.,
and C., his wife (*vendors*), comes before L. M., &c., steward of
the manor, out of court, and in consideration of the sum of
£— to them paid by E. F., of, &c. (*purchaser*), surrenders
into the hands of the lord of the manor by the hands and
acceptance of his said steward, according to the custom of the
manor (the said C. B. having been first examined by the said
steward separately and apart from her said husband, and freely
and voluntarily consenting hereto) (*a*), ALL, &c. (*parcels*), [to
which said hereditaments and premises the said C. D. was
admitted tenant at a court holden for the manor on the — day
of —,] To the use of the said E. F., his heirs and assigns, for
ever, at the will of the lord, according to the custom of the
manor, by and under the rents, suits and services therefor due
and of right accustomed.

This surrender was taken and accepted
the day and year above written by me,

(Signed) L. M. (*Steward*),
Steward of the Manor.

(a) A surrender of copyholds by a married woman is void unless she is privately examined by the lord or his steward as to her voluntary consent. (Scriv. Cop. p. 107.)

No. XXV.

SURRENDER of COPYHOLDS to a PURCHASER by a WOMAN
MARRIED since the 31st of December, 1882 (b).

SURRENDER
BY WOMAN
MARRIED SINCE
1882.

Manor of } BE IT REMEMBERED, that on the — day
— of —, 18—, A. B., the wife of H. B., of, &c., to
whom she was married since the 31st day of December, 1882,
comes, &c. (*same as Precedent No. IX., suprd, p. 233, substituting*
“her” for “his” and “him.”)

No. XXVI.

CONVEYANCE of FREEHOLDS to a MARRIED WOMAN
who has PURCHASED the same out of MONEYS to which
she is ENTITLED for her SEPARATE USE.

CONVEYANCE
OF FREEHOLDS
WHEN
MARRIED
WOMAN HAS
PURCHASED
SAME OUT OF
SEPARATE
ESTATE.

THIS INDENTURE, made the — day of —, BETWEEN
A. B., of, &c. (*rendor*), of the one part, and C. D., wife of E. D.,
of, &c. (*purchaser*), of the other part, WITNESSETH, that in
consideration of the sum of £— to the said A. B. paid by
the said C. D. out of her separate property on or before the
execution of these presents (the receipt whereof the said A. B.
hereby acknowledges,) the said A. B., as beneficial owner,
hereby conveys unto the said C. D. ALL, &c. (*parcels*): To
HOLD the same unto and to the use of the said C. D. in fee
simple (c).

Parties.
In considera-
tion of moneys
paid by mar-
ried woman
out of her
separate
estate.
Vendor con-
veys freeholds
to her in fee
simple.

IN WITNESS, &c.

(b) As the married woman is entitled for her separate use under the Married Women's Property Act, 1882, she can surrender without the concurrence of her husband and without any separate examination.

(c) Since the 31st of December, 1882, the conveyance of freeholds to a married woman can be properly taken in this form, whether she was married before 1883 or since, and whether the separate money with which the purchase has been made has been acquired under the Married Women's Property Act, 1882, or otherwise. See *suprd*, p. 189.

How convey-
ance to a mar-
ried woman
should be
taken.

No. XXVII.

CONVEYANCE
BY A WIFE TO
HER HUSBAND.

CONVEYANCE of a FREEHOLD ESTATE by a MARRIED WOMAN to her HUSBAND, the PROPERTY having been acquired and the MARRIAGE having taken place before 1883 (c).

Parties. THIS INDENTURE, made the — day of —, BETWEEN C. B., the wife of A. B., of, &c., of the one part, and the said

Recite conveyance. A. B. of the other part: WHEREAS by an indenture dated, &c., and made, &c., the hereditaments hereinafter described were duly conveyed unto and to the use of L. M. in fee simple: AND

Death of grantee, leaving vendor, his only child. WHEREAS the said L. M. died on the — day of —, 1865 (d), intestate, leaving the said C. B., his daughter and only child, his sole heiress-at-law: AND WHEREAS the said C. B. was married to the said A. B. before the 1st day of January, 1883: AND WHEREAS the said C. B. is desirous of conveying the said hereditaments unto the said A. B., so that henceforth the same may be held by him for his absolute use and benefit in fee simple:

Wife with concurrence of her husband conveys. NOW THIS INDENTURE WITNESSETH that for effectuating the said desire, and in consideration of her love and affection for her said husband, the said C. B. (e), with the concurrence of the said A. B., by this deed duly acknowledged by her pursuant to the statute in that behalf (f), hereby conveys unto the said A. B., ALL, &c. (parcels), To HOLD the same unto and to the use of the said A. B. in fee simple.

IN WITNESS, &c.

(c) By the Conveyancing Act, 1881, s. 50, a wife can now convey freeholds directly to her husband without the intervention of a grantee to uses.

(d) This date shows that C. B. could not have become entitled to the property for her separate use under the Married Women's Property Acts.

(e) As the conveyance is voluntary, C. B. does not convey as "beneficial owner," so as to be liable to implied covenants for title.

(f) If C. B. had married or acquired the property after the 31st of December, 1882, an acknowledgment by her would have been unnecessary.

No. XXVIII.

CONVEYANCE of FREEHOLDS by a MARRIED WOMAN
entitled for her SEPARATE USE and by her TRUSTEE by
her DIRECTION as BENEFICIAL OWNER (g).

CONVEYANCE
BY A MARRIED
WOMAN AND
HER TRUSTEE
BY HER
DIRECTION.

THIS INDENTURE, made the — day of —, BETWEEN
A. B., of, &c. (*trustee*), of the first part, C. D., the wife of G. D.,
of, &c. (*rendor*), of the second part, and E. F., of, &c. (*purchaser*),
of the third part: WHEREAS G. H., late of, &c., deceased, made
his will, dated, &c., and thereby devised all his real estate unto
and to the use of the said A. B., his heirs and assigns, in trust
for his daughter the said C. D., her heirs and assigns, for
her separate use, and appointed L. M. and N. O. executors
thereof (*death of testator and probate of his will*): AND WHEREAS
the messuage and hereditaments hereinafter described form part
of the real estate devised by the said will as aforesaid: AND
WHEREAS the said C. D. hath agreed to sell to the said E. F.
the said messuage and hereditaments at the price of £—:
NOW THIS INDENTURE WITNESSETH that in con-
sideration of the sum of £— to the said C. D. paid by the
said E. F. on or before the execution of these presents (*the re-
ceipt, &c.*), THE SAID A. B., as trustee, by the direction of the
said C. D. hereby conveys, and the said C. D., as beneficial
owner, hereby conveys and confirms unto the said E. F., ALL,
&c. (*parcels*), To HOLD the same unto and to the use of the said
E. F. in fee simple.

IN WITNESS, &c.

Parties.

Will of G. H.
devising his
real estate to
trustee for
separate use
of vendor.

Probate of
will.

That heredita-
ments to be
conveyed form
part of testa-
tor's real
estate.

Agreement for
sale by C. D.

Consideration.

Trustee by
direction of
C. D. as bene-
ficial owner
conveys,
and C. D.
conveys and
confirms
parcels
to purchaser.

(g) By the Conveyancing Act, 1881, it is provided that where in a conveyance it is expressed that by direction of a person expressed to direct as beneficial owner, another person conveys, then the person giving the direction, whether he conveys and is expressed to convey as beneficial owner or not, shall be deemed to convey and to be expressed to convey as beneficial owner the subject-matter so conveyed by his direction, and that a covenant on his part shall be implied accordingly (sect. 7, subsect. 2).

No. XXIX.

CONVEYANCE
BY MORT-
GAGOR AND
MORTGAGEE.

CONVEYANCE by a MORTGAGOR and MORTGAGEE in
FEE, PART of the PURCHASE-MONEY being paid to the
MORTGAGEE in satisfaction of his debt; the WIFE of the
MORTGAGOR joins to release her DOWER (h).

Parties.	THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (<i>mortgagee</i>), of the first part, C. D., of, &c. (<i>rendor</i>), and E. D. his wife, of the second part, and G. H., of, &c. (<i>pur-</i> <i>chaser</i>), of the third part: WHEREAS by an indenture dated
Recite mortgage.	the — day of —, and made between the said C. D. of the one part, and the said A. B. of the other part, the hereditaments hereinafter described were conveyed by the said C. D. unto and to the use of the said A. B., in fee simple, subject to a proviso therein contained for the redemption of the said hereditaments on payment by the said C. D. to the said A. B. of the sum of
Contract for sale.	£2000, with interest thereon on a day now past: AND WHEREAS the said E. D. was married to the said C. D. before the 1st day of January, 1834: AND WHEREAS the said C. D. hath agreed to sell the said hereditaments to the said G. H. at the price of
Sum due upon mortgage,	£3000: AND WHEREAS the said sum of £2000 is still due on the security of the hereinbefore recited indenture, but all interest for the same has been paid up to the date of these presents:
and agreement for payment of same out of purchase- money.	AND WHEREAS upon the treaty for the said purchase, it was agreed that the said sum of £2000 should be paid to the said A. B. out of the said purchase-money: NOW THIS INDEN-
Witnessing part.	TURE WITNESSETH, that in consideration of the sum of
Consideration to mortgagee,	£2000 to the said A. B. paid by the said G. H. on or before the execution of these presents, by the direction of the said C. D. (the receipt whereof the said A. B. hereby acknowledges),

(h) The deed must be acknowledged by the wife, pursuant to the Fines and Recoveries Act, in order to bar her right to dower. (See 3 & 4 Wm. 4, c. 74, ss. 77, 79.)

Where a wife, married before the Dower Act, joined with her husband by an acknowledged deed in mortgaging his freehold estate to secure his debt, it was held that the wife's right to dower was extinguished in equity as well as at law, and therefore that she had no interest that would entitle her to redeem. (*Dawson v. Bank of Whitehaven*, 6 C. D. 218.)

and in consideration of the sum of £1000 to the said C. D. at the same time paid by the said G. H. (the payment and receipt in manner aforesaid of which said sums of £2000 and £1000 making together the sum of £3000 the said C. D. hereby acknowledges), the said A. B., as mortgagee, by the direction of the said C. D., hereby conveys, and the said C. D., as beneficial owner, hereby conveys, and the said E. D., as beneficial owner, by the direction of the said C. D., for the purpose of releasing her dower, hereby releases and conveys unto the said G. H., ALL, &c. (*parcels*): To HOLD the same unto and to the use of the said G. H., in fee simple, absolutely discharged from all principal money and interest secured by and all claims and demands under the hereinbefore recited indenture of mortgage.

IN WITNESS, &c.

CONVEYANCE
BY MORT-
GAGOR AND
MORTGAGEE.

and considera-
tion to vendor.

Conveyance
by mortgagee,
and mortgagor
and wife, of
parcels

to purchaser
in fee.

No. XXX.

CONVEYANCE *by the DEVISEE of a MORTGAGOR and a MORTGAGEE in FEE to a PURCHASER (i).*

CONVEYANCE
BY DEVISEE
OF MORTGAGOR
AND
MORTGAGEE.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*mortgagee*), of the first part, C. D., of, &c. (*devisee of mortgagor*), of the second part, and E. F., of, &c. (*purchaser*), of the third part (*Recite mortgage by G. H. to A. B.*): AND WHEREAS the said G. H. made his will, dated the — day of —, 1860, and thereby devised all his real estate to the said C. D., and appointed the said C. D. sole executor of the said will (*Death of testator and probate of his will: Agreement for sale, sum due on mortgage, and agreement for payment of same out of purchase-money, supra, p. 256*): NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £2,000 to the said A. B. paid by the said E. F. by the direction of the said C. D., on or before the execution of these presents, (the receipt whereof the said A. B. hereby acknowledges,) and in consideration of the sum of £1000 to the said C. D. at the

Parties.

Recite will of
mortgagor
devising his
real estate.

Consideration
to mortgagee,

(i) In the present case as between the mortgaged estate and the other property of the mortgagor, the mortgaged estate is the primary fund for the payment of the debt. (See 17 & 18 Vict. c. 113; 30 & 31 Vict. c. 69.)

CONVEYANCE
BY DEVISEE
OF MORTGAGOR
AND
MORTGAGEE.

and considera-
tion to vendor.

Conveyance
by mortgagee
and the devisee
of mortgagor,
to purchaser
in fee.

same time paid by the said E. F., (the payment and receipt in manner aforesaid of which said several sums of £2,000 and £1,000, making together the sum of £3,000, the said C. D. hereby acknowledges,) the said A. B. as mortgagee, by the direction of the said C. D., hereby conveys, and the said C. D., as beneficial owner, hereby conveys unto the said E. F. ALL, &c. (*parcels*) : To HOLD the same unto and to the use of the said E. F. in fee simple, absolutely discharged from all principal money and interest secured by and all claims and demands under the hereinbefore recited indenture of mortgage.

IN WITNESS, &c.

No. XXXI.

CONVEYANCE
BY MORTGAGOR
AND BY
MORTGAGEES
FOR TERM WHO
ARE SATISFIED
WITH REMAIN-
ING SECURITY.

Parties.

Recite mort-
gage for a
term.

Agreement
for sale.

That mort-
gagees are
satisfied of
sufficiency of
remaining
security.
Witnessing
part.
Considera-
tion.

CONVEYANCE *by a MORTGAGOR and MORTGAGEES for a TERM of YEARS to a PURCHASER in FEE—the MORTGAGEES being SATISFIED that their REMAINING SECURITY is SUFFICIENT.*

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*vendor and mortgagor*), of the first part, C. D., of, &c., and E. F., of, &c. (*mortgagees*), of the second part, and G. H., of, &c. (*purchaser*), of the third part: WHEREAS by an indenture dated the — day of —, and made between the said A. B. of the one part, and the said C. D. and E. F. of the other part, the hereditaments hereinafter described were (with other hereditaments) demised by the said A. B. unto the said C. D. and E. F. for the term of one thousand years, subject to a proviso for the cesser of the said term upon payment by the said A. B. to the said C. D. and E. F. of the sum of £— with interest thereon on a day now past: AND WHEREAS the said A. B. has agreed to sell the hereditaments hereinafter described to the said G. H. at the price of —: AND WHEREAS the said C. D. and E. F., being satisfied that their said mortgage debt is otherwise sufficiently secured, have agreed to join in these presents in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £— to the said A. B. paid by the said G. H. on or before the execu-

tion of these presents (*the receipt, &c.*), the said A. B., as beneficial owner, hereby conveys, and the said C. D. and E. F., as mortgagees, by the direction of the said A. B., and to the intent that the said term of one thousand years created by the herebefore recited indenture, may, so far as regards the hereditaments intended to be hereby conveyed, be merged and extinguished in the freehold and inheritance of the same, hereby surrender unto the said G. H., ALL, &c. (*parcels*): To HOLD the same unto and to the use of the said G. H., in fee simple, absolutely discharged from the said mortgage debt of £—, and all interest for the same, and all claims and demands on account thereof: AND the said A. B., C. D., and E. F. (*k*) hereby acknowledge the right of the said G. H. to production of the documents of title mentioned in the schedule hereto (which documents are retained by them as relating also to other property), and to delivery of copies thereof, and the said A. B. hereby undertakes for the safe custody of the said documents.

IN WITNESS, &c.

CONVEYANCE
BY MORTGAGOR
AND BY
MORTGAGEES
FOR TERM WHO
ARE SATISFIED
WITH REMAIN-
ING SECURITY.

Mortgagor
conveys and
mortgagees
surrender
parcels
to purchaser
in fee,
free from
mortgage
debt.
Acknowledg-
ment by mort-
gagor and
mortgagees of
right to pro-
duction of
deeds, and
undertaking
by mortgagor
for safe cus-
tody.

THE SCHEDULE ABOVE REFERRED TO.

No. XXXII.

CONVEYANCE of FREEHOLDS and COVENANT to SURRENDER COPYHOLDS by a MORTGAGOR and MORTGAGEE to a PURCHASER (*l*).

THIS INDENTURE, made the — day of —, BETWEEN C. D., of, &c. (*mortgagee*), of the first part, A. B., of, &c.

CONVEYANCE
OF FREE-
HOLDS AND
COVENANT TO
SURRENDER
COPYHOLDS
BY MORTGAGOR
AND
MORTGAGEE.

(*k*) Although the documents will be in the actual custody of the mortgagees, and not of the mortgagor, it is apprehended that they may properly be treated as *retained* by mortgagor and mortgagees within the meaning of sect. 9 of the Conveyancing Act, so as to enable the mortgagor to give a statutory undertaking for safe custody. But whether this is so or not, there can be no doubt that an undertaking so given will bind in equity all persons who from time to time hold the deeds with notice of the undertaking. The mortgagees are not made to join in the undertaking, because it is considered that they object to do so.

(*l*) Simultaneously with the execution of this deed, the mortgagee should

Parties.
Form of
acknowledg-
ment and
undertaking
when sale is
made by mort-
gagor and
mortgagees.

CONVEYANCE
OF FREE-
HOLDS AND
COVENANT TO
SURRENDER
COPYHOLDS
BY MORTGAGOR
AND
MORTGAGEE.

Recite inden-
ture of
mortgage
of freeholds.

Conditional
surrender of
copyholds.

Agreement
for sale.

That mortgage
money is
owing.

Agreement
that mortgage
debt shall be
paid out of
purchase-
money.

First testatum.
Conveyance
of freeholds.
Second
testatum.

Covenant to
surrender
copyholds.

(*vendor*), of the second part, and E. F., of, &c. (*purchaser*), of the third part: WHEREAS by an indenture dated the — day of —, and made between the said A. B. of the one part, and the said C. D. of the other part, the freehold and copyhold hereditaments hereinafter described were conveyed and covenanted to be surrendered to the use of the said C. D., his heirs and assigns, subject as to the said freehold hereditaments to a proviso for the redemption thereof upon payment by the said A. B. to the said C. D. of the sum of £1,000, with interest thereon, on a day now past, and as to the said copyhold hereditaments subject to a condition to be inserted in the surrender thereof corresponding with the said proviso for redemption: AND WHEREAS in pursuance of the covenant in that behalf contained in the said indenture, the said copyhold hereditaments were on or about the — day of — surrendered out of court by the said A. B. to the use of the said C. D., his heirs and assigns, according to the custom of the manor of —, of which the same are holden, subject to a condition for making void the said surrender upon payment of the said sum of £1,000, with interest thereon as aforesaid: AND WHEREAS, &c. (*Recite agreement for sale by A. B. to E. F., for £2,000—that said principal sum of £1,000 is still due, supra, p. 256*): AND WHEREAS it has been agreed that the said sum of £1,000 shall be paid to the said C. D. out of the said purchase-money, and that the said C. D. shall join in these presents in the manner hereinafter expressed, and that immediately after the execution of these presents, satisfaction of the hereinbefore recited conditional surrender shall be entered up on the rolls of the said manor: NOW THIS INDENTURE WITNESSETH, that (*Conveyance of freeholds as in testatum of Precedent No. XXIX., supra, pp. 256, 257*): AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the said agreement, and for the consideration aforesaid, the said A. B., as beneficial owner, with the privity of the said C. D., hereby, &c. (*Covenant to surrender copyholds, see supra, p. 233, adding as follows*), absolutely discharged from the hereinbefore recited conditional surrender, and the said principal money and interest thereby secured, and all claims and demands on

sign a warrant to the steward of the manor to enter up satisfaction of the conditional surrender on the rolls of the manor. For a Precedent of such Warrant, see *infra*.

account thereof (*Declaration as to apportionment of purchase-money for purpose of Stamp Act, supra, p. 246*).

IN WITNESS, &c.

CONVEYANCE
OF FREE-
HOLDS AND
COVENANT TO
SURRENDER
COPYHOLDS BY
MORTGAGOR
AND
MORTGAGEE.

No. XXXIII.

ASSIGNMENT of LEASEHOLDS by MORTGAGOR, and MORTGAGEE by SUBDEMISE, the MORTGAGE DEBT being paid out of the PURCHASE-MONEY.

ASSIGNMENT OF
LEASEHOLDS
BY MORTGAGOR
AND
MORTGAGEE.

THIS INDENTURE, made the — day of —, BETWEEN Parties.
A. B., of, &c. (*vendor and mortgagor*), of the first part, C. D.,
of, &c. (*mortgagee*), of the second part, and G. H., of,
&c. (*purchaser*), of the third part: WHEREAS, by an indenture Recite lease.
of lease (*Recite lease to A. B. for ninety-nine years*): AND
WHEREAS, by an indenture dated, &c., and made, &c. (*date and Mortgage by sub-demise.*
parties), the said premises were demised by the said A. B. unto
the said C. D. for the residue of the said term of ninety-nine
years, except the last ten days thereof, subject to a proviso for
the redemption thereof upon payment by the said A. B. to the
said C. D. of the sum of £500, with interest thereon, on a day
now past: AND WHEREAS the said A. B. hath agreed to sell to Agreement
for sale.
the said G. H. the premises comprised in the said recited in-
denture of lease, for the unexpired residue of the said term of
ninety-nine years therein, subject to the said rent, covenants,
and conditions, at the price of £1,000: AND WHEREAS the Sum still due
on mortgage.
sum of £500 is still due on the security of the said recited
indenture of mortgage, but all interest for the same has been
paid up to the date of these presents: AND WHEREAS upon Arrangement
that debt shall
be paid out
of purchase-
money.
the treaty for the said purchase it was agreed that the said
mortgage debt of £500 should be paid out of the said pur-
chase-money or sum of £1,000: NOW THIS INDEN-
TURE WITNESSETH, that in consideration, &c. (*Conside- Vendor
assigns and
mortgagee
surrenders
premises*
rations to mortgagee and vendor, supra, pp. 256, 257), the said A. B.,
as beneficial owner, hereby assigns, and the said C. D. as mort-
gagee at the request of the said A. B., and to the intent that

ASSIGNMENT OF
LEASEHOLDS
BY MORTGAGOR
AND
MORTGAGEE.

to purchaser
for residue of
term and so
that derivative
term shall
merge.

Subject to rent
and lessee's
covenants.

the said derivative term created by the said recited indenture of mortgage shall be merged and extinguished in the said term of ninety-nine years created by the said recited indenture of lease as aforesaid, hereby surrenders unto the said G. H. The piece or parcel of land, hereditaments, and premises comprised in and demised by the said recited indenture of lease, and all buildings erected thereon : To HOLD the same unto the said G. H., for all the residue now unexpired of the said term of 99 years, subject to the rent reserved by the said indenture of lease, and the covenants and conditions in the same indenture contained, and henceforth on the part of the lessee to be observed and performed, but absolutely discharged from the said mortgage debt of £500, and all interest for the same, and all claims and demands on account thereof (*Covenant by G. H. with A. B. to pay rent and perform covenants, and keep vendor indemnified therefrom, suprd, p. 235*).

IN WITNESS, &c.

No. XXXIV.

CONVEYANCE
BY MORTGAGEE
UNDER POWER.

CONVEYANCE of FREEHOLDS by a MORTGAGEE under a
Power of Sale.

Parties.

Recite mortgage to
vendor.

Power of sale
in mortgagee.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part : WHEREAS by an indenture dated the — day of —, and made between G. H. of the one part, and the said A. B. of the other part, the hereditaments hereinafter described were (with other hereditaments) conveyed by the said G. H. unto and to the use of the said A. B. in fee simple, subject to a proviso therein contained for the redemption of the said hereditaments, on payment by the said G. H. to the said A. B. of the sum of £2,000, with interest thereon, on the — day of — then next ; And by the indenture now in recital it was declared that it should be lawful for the said A. B., his executors, administrators, or assigns, at any time or times without

any further consent on the part of the said G. H., his heirs or assigns, to sell the said hereditaments, or any part or parts thereof, either together or in lots, and either by public auction or by private contract, and subject to any conditions as to title or otherwise, as the said A. B., his executors, administrators, or assigns, should think fit, with power for the said A. B., his executors, administrators, or assigns, to execute assurances and give effectual receipts for the purchase-money, and do all other acts and things necessary or expedient for completing such sale: **AND** WHEREAS in exercise of the power of sale contained in the said indenture, the said A. B. hath agreed to sell the said hereditaments to the said C. D. at the price of £—: **NOW THIS INDENTURE WITNESSETH**, that in consideration, &c. *(the receipt, &c.)*, the said A. B., as mortgagee, hereby conveys unto the said C. D., **ALL, &c. (parcels)**: To hold the same unto and to the use of the said C. D. in fee simple; and the said A. B. hereby acknowledges the right of the said C. D. to production of the documents mentioned in the schedule hereto, and to the delivery of copies thereof.

CONVEYANCE
BY MORTGAGEE
UNDER POWER.

Agreement
for sale.

Conveyance
by mortgagee
to purchaser.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. XXXV.

CONVEYANCE of FREEHOLDS by a MORTGAGEE under the
Power of SALE CONFERRED by the CONVEYANCING ACT,
1881 (m).

CONVEYANCE
BY MORTGAGEE
UNDER
STATUTORY
POWER.

THIS INDENTURE, made the — day of —, BETWEEN Parties.
A. B., of, &c. *(mortgagee and vendor)*, of the one part, and C. D.,
of, &c. *(purchaser)*, of the other part: WHEREAS, &c. *(recite*

(m) See sects. 19, 20, 21, 22, 67.

CONVEYANCE
BY MORTGAGEE
UNDER
STATUTORY
POWER.

Recite agree-
ment to sell
pursuant to
statutory
power.

Considera-
tion.

Mortgagee,
pursuant to
statutory
power, con-
veys parcels
to purchaser.

mortgage as in last Precedent, omitting power of sale): AND WHEREAS, in exercise of the power of sale conferred by the Conveyancing and Law of Property Act, 1881, the said A. B. hath agreed to sell to the said C. D. the hereditaments hereinafter described, at the price of £——: NOW THIS INDENTURE WITNESSETH that in consideration of the sum of £—— to the said A. B. paid by the said C. D., on or before the execution of these presents (*the receipt, &c.*), the said A. B., as mortgagee, hereby conveys unto the said C. D. ALL, &c. (*parcels*): To HOLD the same unto and to the use of the said C. D. in fee simple.

IN WITNESS, &c.

No. XXXVI.

CONVEYANCE
BY EXECUTOR
OF MORT-
GAGEE UNDER
STATUTORY
POWER.

Parties.

Recite lease
for 99 years
to G. H.

Mortgage of
freeholds and
leaseholds to
X. Y.

Will of X. Y.
whereby he

CONVEYANCE of FREEHOLDS and LEASEHOLDS by the EXECUTOR of a MORTGAGEE under the POWER OF SALE CONFERRED by the CONVEYANCING ACT, 1881 (n).

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*executor of mortgagee and tender*), of the one part, and C. D., of, &c. (*purchaser*), of the other part. WHEREAS (*Recite indenture of lease whereby a piece of ground was demised to G. H. for 99 years, at the yearly rent of £10, and subject to certain covenants entered into by the lessee to build upon the piece of ground and otherwise as therein mentioned,—also recite indenture whereby the freehold hereditaments hereinafter described were conveyed by the said G. H. to X. Y. in fee simple, and the said leasehold piece of ground and the buildings which had been erected thereon since the date of the said indenture of lease were assigned by the said G. H. unto the said X. Y. for the then unexpired residue of the said term of 99 years, subject to a proviso for redemption thereof respectively on payment by the said G. H. to the said X. Y. of the sum of £1,000 and interest on the —— day of —— then next*): AND WHEREAS the said X. Y. died on the —— day

(n) See sects. 19, 20, 21, 22, 30, 67.

of —, 1883, having first made his will dated the — day of — whereby he appointed the said A. B. sole executor of his said will, and the said will was duly proved by the said A. B. on the — day of — in the —: AND WHEREAS in exercise of the power of sale conferred by the Conveyancing and Law of Property Act, 1881, the said A. B. as such executor as aforesaid hath agreed to sell to the said C. D. the freehold and leasehold hereditaments hereinafter described or referred to at the price of £—: NOW THIS INDENTURE WITNESSETH that in consideration of the sum of £— to the said A. B. as such executor as aforesaid paid by the said C. D. on or before the execution of these presents (*the receipt, &c.*), the said A. B. as such executor as aforesaid hereby conveys unto the said C. D. ALL, &c. (*freehold parcels*), To HOLD the same unto and to the use of the said C. D. in fee simple: AND THIS INDENTURE ALSO WITNESSETH that for the consideration aforesaid the said A. B., as such executor as aforesaid, hereby assigns unto the said C. D. THE piece of ground and other the premises comprised in and demised by the said indenture of lease, and the messuage or dwelling-house and other buildings which have been erected on the said piece of ground since the said indenture of lease, To HOLD the same unto the said C. D. for all the residue now unexpired of the said term of 99 years created therein as aforesaid, subject to the rent reserved by the said indenture of lease, and the covenants and conditions in the same indenture contained and which henceforth on the part of the lessee ought to be observed and performed (*Covenant by C. D. with A. B. to pay the rent and observe lessee's covenants, supra, p. 235*).

IN WITNESS, &c.

CONVEYANCE
BY EXECUTOR
OF MORT-
GAGEE UNDER
STATUTORY
POWER.

appointed
vendor his
executor.

Agreement by
vendor as
executor to
sell under
power con-
ferred by Act.
Consideration.

Conveyance by
executor of
mortgagee
of freeholds
to purchaser.

Assignment of
leaseholds by
such executor
to purchaser
for residue of
term.

Covenant by
purchaser to
pay rent and
observe
covenants.

No. XXXVII.

CONVEYANCE
BY PERSONAL
REPRESENTA-
TIVES OF
SURVIVOR OF
TWO
MORTGAGEES
ADVANCING
MONEY
JOINTLY.

CONVEYANCE of FREEHOLDS by the LEGAL PERSONAL
REPRESENTATIVES of the SURVIVOR of TWO MORTGAGEES
who ADVANCED the MONEY JOINTLY (o).

Parties.

Recite mort-
gage to two
persons who
jointly ad-
vance.

Death of one
of the mort-
gagees.
Death of
surviving

Devolution of
trust and
mortgaged
estates.

Effect of
Copyhold Act,
1887.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c., and C. D., of, &c. (*personal representatives of E. F.*), of the one part, and N. O., of, &c. (*purchaser*), of the other part: WHEREAS by an indenture, dated, &c., and made between X. Y., of the one part, and E. F. and G. H., of the other part, in consideration of the sum of £—— to the said X. Y. paid by the said E. F. and G. H. out of moneys belonging to them on a joint account, the hereditaments hereinafter described were conveyed by the said X. Y. unto and to the use of the said E. F. and G. H., in fee simple, subject to a proviso for redemption thereof upon payment by the said X. Y. unto the said E. F. and G. H. [or the survivor of them, or the executors or administrators of such survivor, their or his assigns (*p*)] of the sum of £—— with interest thereon as therein mentioned (*here add power in the mortgage enabling the said E. F. and G. H. to sell*): AND WHEREAS the said G. H. died on the — day of —, leaving the said E. F. him surviving: AND WHEREAS the said E. F. died on the — day of —, 1882, having duly made his

(o) The Conveyancing Act, 1881, enacts, that in cases of deaths occurring after the 31st December, 1881, “where an estate or interest of inheritance, or limited to the heir as special occupant in any tenements or hereditaments, corporeal or incorporeal, is vested on any trust or by way of mortgage in any person solely, the same shall, on his death, notwithstanding any testamentary disposition, devolve to and become vested in his personal representatives or representative from time to time in like manner as if the same were a chattel real vesting in them or him. (Sect. 30.) By the 48th section of the Copyhold Act, 1887, it is provided that the 30th section of the Conveyancing Act, 1881 shall not apply to copyholds vested in the tenant on the court rolls upon any trust or by way of mortgage. According to a recent decision, the effect of the last-mentioned section is to repeal the 30th section of the Conveyancing Act, so that if a sole trustee of copyholds had died between the commencement of the last-mentioned Act and the Copyhold Act, 1887, the legal estate therein, which on his death devolved on his personal representatives, was on the passing of the Copyhold Act divested, so as to vest in his customary heir or devisee. (*In re Mill's Trust*, 37 C. D. 312.)

(p) These words will be inserted or omitted, according as they occur or not in the recited deed.

will, dated, &c., whereby he appointed the said A. B. and C. D. executors thereof, and such will was duly proved by the said executors on the — day of —, in the Probate Registry at — of the High Court of Justice: AND WHEREAS in exercise of the said power of sale contained in the said indenture the said A. B. and C. D., as the personal representatives of the said E. F., have agreed to sell to the said N. O. the said hereditaments at the price of £—: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £— to the said A. B. and C. D., as the personal representatives of the said E. F., paid by the said N. O. on or before the execution of these presents (*the receipt, &c.*), the said A. B. and C. D. as such personal representatives as aforesaid hereby convey unto the said N. O. ALL, &c. (*parcels*), To HOLD the same unto and to the use of the said N. O. in fee simple.

IN WITNESS, &c.

CONVEYANCE
BY PERSONAL
REPRESENTA-
TIVES OF
SURVIVOR OF
TWO
MORTGAGEEES
ADVANCING
MONEY
JOINTLY.

mortgagee,
having first
made his will
whereby he
appointed
vendors his
executors.

Agreement
for sale by
personal re-
presentatives
of surviving
mortgagee.

Conveyance
by personal
representa-
tives of
surviving
mortgagee
to purchaser.

No. XXXVIII.

CONVEYANCE by the EXECUTOR and HEIR of deceased
TRANSFEREE of a MORTGAGE under a POWER OF SALE
in a MORTGAGE (q).

BY EXECUTOR
AND HEIR OF
TRANSFEREE
OF MORTGAGE
UNDER POWER.

THIS INDENTURE, made the — day of —, BETWEEN
C. D., of, &c. (*heir of transferee of mortgage*), of the first part,
A. B., of, &c. (*executor of transferee*), of the second part, and
E. F., of, &c. (*purchaser*), of the third part (*Recite mortgage*

Parties.

(q) The 4th section of the Vendor and Purchaser Act, 1874, provided that the legal personal representative of a mortgagee might, on payment of all sums secured by the mortgage, convey the mortgaged estate; but it is apprehended, that that section could not apply unless it appeared on the face of the conveyance that the purchase-money would be sufficient to pay off the whole mortgage debt, and the personal representative admitted that by the sale and conveyance all sums secured by the mortgage had been paid. This section was repealed by the Conveyancing Act, 1881, s. 10, as from the 31st December, 1881; so that if the transferee had died subsequently to that date, the legal estate under sect. 30 of the last-mentioned Act must have devolved on his personal representatives, in which case the concurrence of the heir would have been unnecessary.

BY EXECUTOR
AND HEIR OF
TRANSFEREE
OF MORTGAGE
UNDER POWER.

Recite mort-
gage with
power of sale.
Transfer of
mortgage.

Death of
transferee,
and his will
appointing
vendor to be
executor.

That will
contained no
devise of
mortgaged
estates.

That mortgage
money is still
due.

Agreement
for sale by
executor.

That heir had
agreed to join.

Witnessing
part.

Heir conveys
and executor
confirms par-
cels to pur-
chaser in fee.

to G. H. for £1,000, with power to G. H., his executors, administrators, or assigns, to sell in case of default, and declaration that the power might be exercised by any person entitled to give a discharge for mortgage-money): AND WHEREAS by an indenture dated the — day of —, indorsed on the said indenture of mortgage, and made between the said G. H. of the one part, and J. K., of, &c., of the other part, the principal sum of £1,000 secured by the said indenture of mortgage, and the interest thereof, were assigned unto the said J. K. absolutely, and the hereditaments comprised in the said indenture were conveyed unto and to the use of the said J. K. in fee simple, subject to such right or equity of redemption as was then subsisting therein: AND WHEREAS the said J. K. died on the — day of —, 1880, having duly made his will, dated the — day of —, whereby he appointed the said A. B. the sole executor thereof, who shortly afterwards duly proved the same in the Probate Registry at — of the High Court of Justice: AND WHEREAS the said will contained no devise of estates vested in the said J. K. as mortgagee, and he died intestate as to such estates, leaving the said C. D. his heir-at-law: AND WHEREAS the said principal sum of £1,000 still remains due to the said A. B., as the executor of the said J. K., upon the security of the said indenture of mortgage: AND WHEREAS, in exercise of the said power of sale contained in the said indenture of mortgage as aforesaid, the said A. B. has agreed, &c. (*agreement by A. B. for sale to E. F.*): AND WHEREAS the said C. D., at the request of the said A. B., has agreed to join in these presents for the purpose of conveying the legal estate in the said hereditaments which has devolved upon him as the heir-at-law of the said J. K.: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £— to the said A. B. paid by the said E. F. on or before the execution of these presents (*the receipt, &c.*), the said C. D. as trustee, at the request of the said A. B. as mortgagee, hereby conveys, and the said A. B. as mortgagee, hereby conveys and confirms unto the said E. F. (*Conveyance of freeholds to E. F. in fee simple, supra, p. 225*).

IN WITNESS, &c.

No. XXXIX.

CONVEYANCE of an ESTATE subject to a MORTGAGE
DEBT, which the PURCHASER undertakes to PAY OFF (r).

CONVEYANCE
SUBJECT TO
MORTGAGE
DEBT.

THIS INDENTURE, made the — day of —, BETWEEN
A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*pur-
chaser*), of the other part (*Recite indenture of mortgage for secur-
ing £700 and interest*): AND WHEREAS the said principal sum
of £700 still remains due and owing on the security of the
hereinbefore recited indenture, but all interest for the same has
been paid up to the date of these presents: AND WHEREAS the
said A. B. hath agreed to sell to the said C. D. the said here-
ditaments (subject to the said principal sum of £700 and the
interest henceforth to become due for the same), at the price of
£—: NOW THIS INDENTURE WITNESSETH, that
in consideration of the sum of £— to the said A. B. paid by
the said C. D. on or before the execution of these presents (*the
receipt whereof, &c.*), the said A. B., as beneficial owner, hereby
conveys unto the said C. D., ALL, &c. (*parcels*): To HOLD the
same (subject nevertheless to the said indenture of mortgage,
and the said sum of £700 thereby secured, and all interest
henceforth to become due in respect of the same), unto and to
the use of the said C. D. in fee simple: AND THE SAID C. D.
hereby covenants with the said A. B., that the said C. D., his
heirs, executors, administrators, or assigns, will pay the said
principal sum of £—, and all interest henceforth to become
due thereon, and will keep indemnified the said A. B., and his
estate and effects, from all claims and demands on account
thereof.

Parties.

Recite inden-
ture of mort-
gage.

Principal
money still
due.

Agreement
for sale sub-
ject to mort-
gage debt.

Witnessing
part.
Consideration.

Vendor con-
veys parcels

to purchaser
subject to
mortgage debt
and interest.

Covenant by
purchaser to
indemnify the
vendor from
mortgage debt.

IN WITNESS, &c.

(r) The *ad valorem* stamp duty on this deed will be on the purchase-money, plus the £700 due on the mortgage. (33 & 34 Vict. c. 97, s. 73.) It will be borne in mind that the above is not a convenient arrangement as regards the vendor, because if he has entered into a covenant to pay the mortgage money, he will remain liable to that covenant, and may be called upon to pay under it should the value of the property be afterwards reduced below the amount of the debt. It would be better, if the mortgagee consents, to convey free from the debt, and let a new mortgage be given by the purchaser to the mortgagee by a deed executed immediately after the conveyance.

No. XL.

CONVEYANCE
OF EQUITY OF
REDEMPTION
TO MORTGAGEE.

CONVEYANCE of the EQUITY of REDEMPTION in FREE-
HOLDS to a MORTGAGEE as PURCHASER.

Parties.

Recite mort-
gage.

Agreement
for sale,
and that mort-
gage debt be
retained out
of purchase-
money.

Witnessing
part.
Considera-
tions.

Conveyance to
purchaser in
fee.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*mortgagor and vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part (*Recite mortgage of freeholds to C. D. to secure the sum of £500, and interest, and that principal is still due*): AND WHEREAS the said A. B. hath agreed to sell the said hereditaments to the said C. D. at the price of £1,000, and it has been agreed that the said mortgage debt of £500 shall be retained by the said C. D. out of the said purchase-money: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £500 retained by the said C. D. in full satisfaction of the principal sum of £500 so as aforesaid remaining due and owing to him upon the said mortgage security (and which last-mentioned sum the said C. D. hereby declares to be fully satisfied accordingly), and also in consideration of the sum of £500 to the said A. B. paid by the said C. D. on or before the execution of these presents (the receipt of which last-mentioned sum of £500, making, with the said sum of £500 retained as aforesaid, the said purchase-money of £1,000, the said A. B. hereby acknowledges), the said A. B., as beneficial owner, hereby conveys, &c. (*Conveyance by A. B. to C. D. in fee simple.*)

IN WITNESS, &c.

No. XLI.

CONVEYANCE
BY MORTGAGOR
AND MORT-
GAGEE, THE
MORTGAGE
DEBT BEING
KEPT ON FOOT.

CONVEYANCE by a VENDOR and his MORTGAGEE where
it is desired to keep the MORTGAGE DEBT on foot as a
protection against MESNE INCUMBRANCES (s).

Parties.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*mortgagee*), of the first part, C. D., of, &c. (*mort-*

(s) See *Adams v. Angell*, 5 Ch. D. 634.

gagor and vendor), of the second part, and E. F., of, &c. (*purchaser*), of the third part (*recite mortgage in fee by C. D. to A. B. to secure £500 and interest,—agreement by C. D. for sale of the hereditaments to E. F. free from incumbrances, for £1,000—and that principal sum remains due*): AND WHEREAS upon the treaty for the said purchase it was agreed that the said mortgage debt of £500 should be paid by the said E. F. to the said A. B. out of the said purchase-money, and that the said mortgage debt should be kept on foot as a protection against subsequent incumbrances in the manner hereinafter mentioned: NOW THIS INDENTURE WITNESSETH, that in pursuance of the aforesaid agreement in this behalf, and in consideration, &c. (£500 paid to A. B. and £500 to C. D., the receipt, &c.), the said A. B., as mortgagee, by the direction of the said C. D., hereby assigns unto the said E. F. the principal sum of £500, secured by the said indenture of mortgage: To HOLD the same unto the said E. F. absolutely: AND THIS INDENTURE ALSO WITNESSETH, that in pursuance of the aforesaid agreement in this behalf, and for the considerations aforesaid, THE SAID A. B., as mortgagee, by such direction as aforesaid, hereby conveys, and the said C. D., as beneficial owner, hereby conveys and confirms unto the said E. F., ALL, &c. (*parcels*): To HOLD the same unto and to the use of the said E. F. in fee simple: PROVIDED ALWAYS, and it is hereby declared that the said principal sum of £500 hereby assigned shall be deemed to be a subsisting charge on the hereditaments hereby conveyed as a protection to the said E. F., his heirs and assigns against subsequent incumbrances, if any such there be, but for no other purpose.

IN WITNESS, &c.

CONVEYANCE
BY MORTGAGOR
AND MORT-
GAGEE, THE
MORTGAGE
DEBT BEING
KEPT ON FOOT.

Agreement
that mortgage
debt and secu-
rities should
be kept on
foot.

Witnessing
part.

Assignment of
mortgage debt
to purchaser.

Conveyance
of parcels

to purchaser.

Declaration
that mortgage
debt remains
subsisting
charge against
incumbrances.

No. XLII.

CONVEYANCE of FREEHOLDS by TWO TENANTS IN
COMMON.

OF FREEHOLDS
BY TWO
TENANTS IN
COMMON.

THIS INDENTURE, made the — day of —, BETWEEN
A. B., of, &c. (*the owner of one moiety*), of the first part, C. D.,

Parties.

OF FREEHOLDS
BY TWO
TENANTS IN
COMMON.

Consideration,

One of vendors
as to one
moiety,
and other
vendor as to
other moiety,
convey
parcels,
to purchaser
in fee.

of, &c. (*the owner of the other moiety*), of the second part, and E. F., of, &c. (*purchaser*), of the third part: (*recite will of X. Y., devising the property to his two sons, A. B. and C. D., their heirs and assigns, in equal shares as tenants in common,—the death of X. Y. and probate of his will*): AND WHEREAS the said A. B. and C. D. have agreed, &c. (*agreement for sale, see supra, p. 228*): NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. and C. D. paid by the said E. F. on or before the execution of these presents (the receipt whereof the said A. B. and C. D. hereby acknowledge), THE SAID A. B. as to one undivided moiety of the hereditaments hereinafter described, as beneficial owner, and as to all other (if any) his share, estate, and interest therein, AND the said C. D. as to the other undivided moiety of the same hereditaments, as beneficial owner, and as to all other (if any) his share, estate, and interest therein, do respectively hereby convey unto the said E. F., ALL, &c. (*parcels*): To HOLD the same unto and to the use of the said E. F. in fee simple.

IN WITNESS, &c.

No. XLIII.

OF FREEHOLDS
BY TENANTS IN
COMMON,
TWO BEING
MARRIED
WOMEN.

Parties.

CONVEYANCE of FREEHOLDS by THREE TENANTS IN COMMON (Two of them being MARRIED WOMEN) (t).

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*owner of one-third*), of the first part, C. D., of, &c., and E., his wife (*E. being owner of one other third*), of the second part, G. H., of, &c., and I., his wife (*I. being owner of the remaining third*), of the third part, and L. M., of, &c. (*purchaser*), of the fourth part (*Recite will of X. Y. devising the property to his three sisters A. B., E., and I., their heirs and assigns,*

(t) The two sisters having married before 1883, and the testator having died before that date, this deed must be acknowledged by the married women. If the testator had died subsequently to 1882, the shares would have been separate property by virtue of the Married Women's Property Act, 1882, and in that case an acknowledgment would have been unnecessary.

in equal shares as tenants in common—death of X. Y., on the — day of —, 1880, and probate of his will): AND WHEREAS the said E. intermarried with the said C. D. on the — day of —, 1878, and the said I. intermarried with the said G. H. on the — day of —, 1879: AND WHEREAS the said A. B., C. D., and E., his wife, and G. H. and I., his wife, have agreed, &c. (*agreement for sale, see supra, p. 228*): NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £— to the said A. B., C. D., and E., his wife, and G. H. and I., his wife, paid by the said L. M., &c. (*the receipt, &c.*), THE said A. B. as to one undivided third part or share of the hereditaments hereinafter described, as beneficial owner, and as to all other (if any) his share, estate, and interest therein, AND the said C. D. and E., his wife, as to one other undivided third part or share of the same hereditaments, as beneficial owners, and as to all other (if any) the share, estate, and interest of the said C. D. and E., his wife, or either of them, therein, AND the said G. H. and I., his wife, as to the remaining one undivided third part or share of the same hereditaments, as beneficial owners, and as to all other (if any) the share, estate, and interest of the said G. H. and I., his wife, or either of them, therein, do by this deed acknowledge by the said E. F. and J. H., pursuant to the statute in that behalf, convey unto the said L. M., ALL, &c. (*parcels*): To HOLD the same unto and to the use of the said L. M., in fee simple.

IN WITNESS, &c.

OF FREEHOLDS
BY TENANTS IN
COMMON,
TWO BEING
MARRIED
WOMEN.

Marriage of
the two sisters
of testator.

Agreement
for sale.

Witnessing
part.

Considera-
tion.

Conveyance
by the three
tenants in
common and
the husbands
of the two
sisters.

To purchaser
in fee.

No. XLIV.

CONVEYANCE of FREEHOLDS by several TENANTS in COMMON, the SHARE of one having been assured upon TRUST for SALE and being now CONVEYED PURSUANT to this TRUST.

BY SEVERAL
TENANTS IN
COMMON
WHERE ONE
SHARE HAS
BEEN
CONVEYED ON
TRUST FOR
SALE.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*owner of two undivided fourth parts of the hereditaments*), of the first part, C. D., of, &c. (*owner of one other undivided fourth part*), of the second part, E. F., of, &c., and

Parties.

BY SEVERAL
TENANTS IN
COMMON
WHERE ONE
SHARE HAS
BEEN CON-
VEYED ON
TRUST FOR
SALE.

Recite devise
of residuary
legatee.

As to two-
fourths for
son.

As to one-
fourth for
another son,
and as to
remaining
fourth for
another son
who has died.

Hereditaments
to be conveyed
form part of
residuary
estate.

Agreement
for sale.

Witnessing
part.

Parties of the
first, second,
and third
parts convey
parcels

G. H., of, &c. (*trustees for sale of the remaining one undivided fourth part*), of the third part, and I. K., of, &c. (*purchaser*), of the fourth part: WHEREAS X. Y., late of, &c., deceased, made his will, dated, &c., and thereby, after making certain specific devises and bequests, he devised and bequeathed all the residue of his real and personal estate and effects as follows: as to two undivided fourth parts or shares thereof unto his son the said A. B., and as to one other undivided fourth part or share thereof unto his son the said C. D., and as to the remaining one undivided fourth part or share thereof unto his son L. M. (since deceased), and the said testator appointed his sons the said A. B. and C. D. executors of his said will: AND WHEREAS, &c. (*Recite death of testator and probate of his will*): AND WHEREAS the hereditaments hereinafter described form part of the residuary real estate of the said testator: AND WHEREAS (*Recite will of L. M., giving all his real and personal estate to E. F. and G. H. upon trust for sale—death of L. M. and probate of his will*): AND WHEREAS the said A. B. as to two undivided fourth parts or shares of and in the hereditaments hereinafter described, the said C. D. as to one other undivided fourth part or share thereof, and the said E. F. and G. H. as to the remaining one undivided fourth part or share thereof, and in exercise of the trust for this purpose contained in the said will of the said L. M., deceased, have respectively agreed to sell to the said I. K. the said hereditaments, at the price of £—: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £— (being two fourth parts of the said purchase-money of £—) to the said A. B., the sum of £— (being one fourth part of the said purchase-money) to the said C. D., and the sum of £— (being the remaining one fourth part of the said purchase-money) to the said E. F. and G. H., respectively paid by the said I. K. on or before the execution of these presents (the receipt of which several sums respectively the said A. B. and C. D., and the said E. F. and G. H., do hereby respectively acknowledge) THE SAID A. B. as to two undivided fourth parts or shares of the hereditaments hereinafter described as beneficial owner, and as to all other (if any) his share, estate, and interest therein, AND the said C. D. as to one other undivided fourth part or share of the same hereditaments, as beneficial owner, and as to all other (if

any), his share, estate, and interest therein, AND the said E. F. and G. H. as trustees as to the remaining one undivided fourth part or share of the same hereditaments, and as to all other (if any) their share, estate, and interest therein, do hereby respectively convey unto the said I. K., ALL, &c. (*parcels*), To HOLD the same unto and to the use of the said I. K., in fee simple.

IN WITNESS, &c.

BY SEVERAL
TENANTS IN
COMMON
WHERE ONE
SHARE HAS
BEEN
CONVEYED ON
TRUST FOR
SALE.

to purchaser
in fee.

No. XLV.

CONVEYANCE *by* TENANTS *in* COMMON. COVENANTS *by the* FATHER *of one of the* VENDORS, *who is an* INFANT, *that he shall join on his attaining* TWENTY-ONE, *and* DECLARATION *of* TRUST *as to his* SHARE *in the* PURCHASE-MONEY.

CONVEYANCE
BY TENANTS IN
COMMON,
ONE OF THEM
BEING AN
INFANT.

THIS INDENTURE, made the — day of —, BETWEEN Parties.

A. B. of, &c. (*owner of one moiety*), of the first part, C. D. of, &c. (*the infant owner of other moiety*), of the second part, E. F. of, &c. (*father of the infant*), of the third part, G. H. of, &c. (*trustee*), of the fourth part, and L. M. of, &c. (*purchaser*), of the fifth part (*Recite will of X. Y. devising the property to A. B. and C. D. as tenants in common,—agreement for sale by A. B. and C. D. to L. M.*): AND WHEREAS the said C. D. is under the age of twenty-one years, and he will attain that age on the — day of —, 18—: AND WHEREAS the said E. F. hath agreed to enter into such covenants as are hereinafter contained, for securing the confirmation of this conveyance by the said C. D. on his attaining the age of twenty-one years, and it hath also been arranged that the sum of £—, being the share of the said C. D. in the said purchase-money shall be held by the said G. H. upon the trusts hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £— by the said L. M. paid to the said A. B. on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges), and also in consideration of the sum of £— by the said L. M. placed in the hands of the said G. H. to be held by him on the trusts hereinafter mentioned (the receipt of which last-mentioned sum of £—

Agreement for
sale by tenants
in common.

Infancy of one
of the tenants
in common,
and arrange-
ment as to his
share.

Witnessing
part.

CONVEYANCE
BY TENANTS IN
COMMON,
ONE OF THEM
BEING AN
INFANT.

Conveyance
by tenants in
common,
to purchaser.

Father of
infant cove-
nants that
infant shall
join on attain-
ing his ma-
jority,

and that pur-
chaser shall
have quiet pos-
session in the
meantime.

Declaration of
trust as to
infant's share
in purchase-
money.

the said G. H. hereby acknowledges), the said A. B. as to one undivided moiety of the hereditaments hereinafter described as beneficial owner, and as to all other (if any) his estate and interest therein, and the said C. D. as to the other undivided moiety of the said hereditaments as beneficial owner, and as to all other (if any) his estate and interest therein, do hereby respectively convey unto the said L. M., ALL, &c. (*parcels*): **TO HOLD** the same unto and to the use of the said L. M. in fee simple: **AND THE SAID E. F.** hereby covenants with the said L. M. (*u*), that the said C. D. shall confirm these presents within one calendar month next after he shall have attained the age of twenty-one years, or in the event of the death of the said C. D. before he shall have attained that age, leaving the said E. F. his heir-at-law, then that he the said E. F. shall and will confirm these presents within one calendar month next after the decease of the said C. D.: **AND** that in the meantime the said L. M., his heirs and assigns, shall, from the date of these presents, have quiet and uninterrupted possession of the moiety of the said C. D. of and in the said hereditaments, and shall receive the rents and profits thereof, for his and their absolute use and benefit, without any interruption, claim or demand from or by the said C. D., or any person lawfully claiming under him or on his behalf: **AND IT IS HEREBY DECLARED** that the said G. H., his executors and administrators, shall at once invest the said sum of £—— so placed in his hands in the 2½ per Cent. Annuities, and shall accumulate the dividends thereof during the infancy of the said C. D., and subject thereto the said stock, and the dividends thereof shall go as follows, that is to say: If these presents shall be confirmed by the said C. D., or the said E. F. as his heir, pursuant to the covenant of the said E. F. hereinbefore contained, **THEN IN TRUST** for the said C. D., or the said E. F., absolutely: **BUT IF** these presents shall not be confirmed as aforesaid, **THEN IN TRUST** for the said L. M. absolutely.

IN WITNESS, &c.

(*u*) By the 58th section of the Conveyancing Act, 1881, it is provided, that a covenant relating to land of inheritance, or devolving on the heir as special occupant, shall be deemed to be made with the covenantee, his heirs and assigns, and shall have effect as if heirs and assigns were expressed.

No. XLVI.

CONVEYANCE of an UNDIVIDED MOIETY in FREEHOLDS
by one TENANT in COMMON to his Co-TENANT.

OF ONE MOIETY
TO TENANT OF
OTHER MOIETY.

THIS INDENTURE, made the — day of —, BETWEEN Parties.

A. B., of, &c. (*vendör*), of the one part, and C. D., of, &c. (*purchaser*), of the other part (*recite conveyance to A. B. and C. D., their heirs and assigns, as tenants in common*): AND WHEREAS the said A. B. hath agreed to sell his moiety of the said hereditaments to the said C. D., at the price of £—: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £— to the said A. B. paid by the said C. D. on or before the execution of these presents (*the receipt, &c.*), THE SAID A. B., as beneficial owner, hereby conveys unto the said C. D., ALL that the one undivided moiety of the said A. B. of and in (*parcels*): To HOLD the same unto and to the use of the C. D., in fee simple.

Agreement by
one tenant in
common to sell
to the other.
Consideration.

Vendor con-
veys to pur-
chaser.

IN WITNESS, &c.

No. XLVII.

CONVEYANCE of FREEHOLDS by JOINT TENANTS.

CONVEYANCE
BY JOINT
TENANTS.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c., and C. D., of, &c. (*vendors*), of the one part, and E. F., of, &c. (*purchaser*), of the other part (*Recite instrument creating joint tenancy in vendors*): AND WHEREAS the said A. B. and C. D. have agreed to sell to the said E. F. the hereditaments hereinafter described at the price of £—: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £— to the said A. B. and C. D. paid by the said E. F. on or before the execution of these presents (*the receipt whereof the said A. B. and C. D. hereby acknowledge*), THE SAID A. B. as to one undivided moiety of the heredita-

Parties.

Recite con-
veyance to
vendors as
joint tenants
in fee.

Consideration.

Vendors
convey,

CONVEYANCE
BY JOINT
TENANTS.

parcels,
to purchaser
in fee.

ments hereinafter described, as beneficial owner, and as to all other (if any) his estate and interest in the said hereditaments, AND the said C. D. as to the other undivided moiety of the said hereditaments, as beneficial owner, and as to all other (if any) his estate and interest therein, do hereby convey (x) unto the said E. F., ALL, &c. (*parcels*): To HOLD the same unto and to the use of the said E. F., in fee simple.

IN WITNESS, &c.

No XLVIII.

ASSIGNMENT OF
LEASEHOLDS
BY TENANTS
IN COMMON.

ASSIGNMENT of LEASEHOLDS by TENANTS in COMMON.

Parties.

Recite lease
of premises to
X. Y. for 99
years.

Lease contain-
ing covenant
by lessee *inter
alia* to erect
a dwelling-
house within
twelvemonths.

Each of the
two joint
tenants should
convey a
moiety.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*owner of one moiety*), of the first part, C. D., of, &c. (*owner of other moiety*), of the second part, and E. F., of, &c. (*purchaser*), of the third part: WHEREAS by an indenture dated, &c., and made between G. H., of the one part, and X. Y., of the other part, all that piece of land, &c. (*parcels, as described in the lease*) were demised by the said G. H. unto the said X. Y. for the term of 99 years, computed from the — day of —, at the yearly rent of £20, and subject to the lessee's covenants therein contained, and by the indenture now in recital the said X. Y. (*inter alia*) covenanted with the said G. H. that he would, within twelve calendar months next after the date of the indenture now in recital, at his own expense, erect upon the piece of land thereby demised and complete so as to be fit for habitation a messuage or dwelling-house of the value of £—— at least, and at all times during the said term keep the same in repair as

(x) Where two joint tenants, who are beneficial owners, sell, it is proper to make each convey a moiety, thereby limiting to a moiety his liability under the statutory covenant for title. See Co. Lit. 186 a, where Lord Coke, speaking of joint tenants, says:—"And albeit they are so seised (*i. e. per mie et per tout*), yet to divers purposes each of them has but a right to a moiety, as to enfeof, give, or demise. And where all the joint tenants join in a feoffment, every one of them in judgment of law doth give but his part. And Littleton afterwards in this chapter saith, that one joint tenant hath one moiety in law, and the other the other moiety."

therein mentioned: AND WHEREAS pursuant to the covenant in this behalf contained in the said indenture of lease the said X. Y., shortly after the execution of such indenture, erected a messuage or dwelling-house on the piece of land thereby demised of a value exceeding the sum of £——: AND WHEREAS by an indenture dated, &c., and made between the said X. Y., of the one part, and the said A. B. and C. D., of the other part, in consideration of the sum of £—— to the said X. Y. paid by the said A. B. and C. D. in equal shares, the piece of land comprised in and demised by the said indenture, and the messuage or dwelling-house and other buildings which had been erected on the said piece of land as aforesaid, were assigned by the said X. Y. unto the said A. B. and C. D. in equal shares as tenant in common, and not as joint tenants, for the then unexpired residue of the said term of 99 years created as aforesaid, subject to the said yearly rent of £20, and also subject to the lessee's covenants therein contained: AND WHEREAS the said A. B. and C. D. have agreed to sell to the said E. F. the piece of land comprised in the said indenture of lease, and the messuage or dwelling-house and other buildings which have been erected thereon as aforesaid, for the residue now unexpired of the said term of 99 years, subject to the said rent and covenants at the price of £——. NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. and C. D. paid by the said E. F. on or before the execution of these presents (the receipt whereof the said A. B. and C. D. hereby acknowledge), THE SAID A. B., as to one undivided moiety of the said leasehold premises as beneficial owner, and as to all other (if any) his estate and interest therein, and the said C. D., as to the remaining one undivided moiety of the said leasehold premises as beneficial owner, and as to all other (if any) his estate and interest therein, hereby respectively assign unto the said E. F. THE PIECE of land and premises comprised in and demised by the said indenture of lease, and the messuage or dwelling-house and other buildings erected thereon as aforesaid, To HOLD the same unto the said E. F. for all the residue now unexpired of the said term of 99 years, subject to the rent reserved by the said indenture of lease, and to the covenants and conditions in the same indenture contained and which henceforth on the lessee's part ought to be observed and performed. AND THE SAID E. F. hereby covenants with the said

ASSIGNMENT OF
LEASEHOLDS
BY TENANTS
IN COMMON.

That lessee
erected a dwelling-house on
the land,
within twelve
months pursuant to the
covenant.
Assignment
of premises by
X. Y. to the
vendors as
tenants in
common.

Agreement
for sale.

Consideration.

A. B. as to one
moiety and
C. D. as to the
other moiety,

assign the
premises

to E. F. for
residue of term
subject to rent
and lessee's
covenants.

Covenant by
purchaser to

**ASSIGNMENT OF
LEASEHOLDS
BY TENANTS
IN COMMON.**

pay rent and
observe lessee's
covenants and
to indemnify
vendors there-
from.

A. B. and C. D. respectively that the said E. F., his executors, administrators, or assigns, will, during the residue of the said term, pay the rent reserved by the said indenture of lease, and observe and perform the covenants and conditions therein contained, and which henceforth on the lessee's part ought to be observed and performed, and will keep indemnified the said A. B. and C. D. respectively, and their respective estates and effects from and against all claims and demands on account of the same.

IN WITNESS, &c.

No. XLIX.

**ASSIGNMENT OF
REVERSIONARY
SHARES IN PRO-
CEEDS OF SALE.**

ASSIGNMENT by the Owners of Two THIRD PARTS of moneys to arise from the sale of FREEHOLD HEREDITAMENTS which are impressed with a TRUST for SALE after the death of the tenant for life—the OWNER of the REMAINING THIRD PART being the PURCHASER, and ELECTING to take the entirety as REAL ESTATE.

Parties.

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c. (owner of one third part of reversionary proceeds), of the first part, C. D. of, &c. (owner of one other third part of said reversionary proceeds), of the second part, and E. F., of, &c. (purchaser), of the third part (*Recite will of X. Y. whereby he devised (here set out parcels as in will) unto G. H., for his life, and after his decease to trustees, upon trust to sell the same, and to stand possessed of proceeds of sale in trust for all the children of X. Y. who should be living at his decease, and should attain the age of twenty-one years in equal shares—Death of X. Y., and probate of his will*): AND WHEREAS there were issue of the said X. Y. living at his decease five children and no more, viz., the said A. B., C. D., and E. F., all of whom have attained the age of twenty-one years, and two other children, who died under that age: AND WHEREAS the said A. B. and C. D. have agreed to sell to the said E. F.

That there
were three
children of
X. Y. who
attained
twenty-one.

Agreement
for sale of
two-thirds.

their respective two third parts or shares of the moneys to arise from the sale of the hereditaments devised by the said will as aforesaid, and of the rents and profits of the said hereditaments from and after the decease of the said G. H. until the sale thereof, at the price of £—: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £— to the said A. B. and C. D. paid by the said E. F. on or before the execution of these presents (*the receipt, &c.*), THE SAID A. B. and C. D. as beneficial owners, do hereby respectively assign unto the said E. F., ALL THOSE the two several third parts or shares of them the said A. B. and C. D. respectively, of and in the moneys to arise from the sale of the hereditaments so devised by the said recited will upon trust for the sale thereof after the decease of the said G. H. as aforesaid, and of the rents and profits of the said hereditaments from and after the decease of the said G. H. until the sale thereof: To HOLD the same unto the said E. F., absolutely: AND IT IS HEREBY declared by the said E. F. that the said hereditaments so devised by the said recited will of the said X. Y. as aforesaid shall henceforth (subject to the said life interest of the said G. H. therein) be held and enjoyed by the said E. F., in fee simple, as real estate absolutely discharged from the trust contained in the said will for the sale thereof after the decease of the said G. H. as aforesaid (y).

IN WITNESS, &c.

(y) After the execution of this assurance E. F. will enjoy the property, discharged from the trust for sale, as real estate, so that the legacy duty which would otherwise have been payable upon the sale moneys will become a charge upon the land itself, and must therefore be paid off before the estate can be sold to a future purchaser free from incumbrances. The duty in such a case must be paid upon a sum representing the actual value of the property.

ASSIGNMENT OF
REVERSIONARY
SHARES IN PRO-
CEEDS OF SALE.

Witnessing
part.

Consideration.

The owners of
two-thirds
assign

two equal
third parts of
moneys to
arise from sale,

to owner of
remaining
one-third
absolutely.

Declaration by
purchaser that
hereditaments
shall be held
discharged
from trust for
sale.

No. L.

CONVEYANCE
BY SURVIVING
COPARCENER
AND HER
MORTGAGEE
AND DEVISEES
IN COMMON OF
DECEASED
COPARCENER.

CONVEYANCE by SURVIVING COPARCENER and her
MORTGAGEE and the DEVISEES in common of a
DECEASED COPARCENER to a PURCHASER.

Parties.

Death of late
owner intestate,
leaving his daughters
his co-heiresses.

Will of one
co-heiress, her
death and probate
of will.

Mortgage
by other
co-heiress.
Agreement
for sale.

Witnessing
part.
Consideration.

All parties
convey to
purchaser in
fee.

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c. (*mortgagee of one moiety*), of the first part, C. D. of, &c. (*mortgagor of the same moiety*), of the second part, E. F. of, &c. (*owner of one fourth share*), of the third part, G. H. of, &c. (*owner of remaining fourth share*), of the fourth part, and I. K. of, &c. (*purchaser*), of the fifth part: WHEREAS X. Y., late of, &c., died on the — day of — intestate, being at the time of his death seised in fee simple of the hereditaments hereinafter described, and leaving the said C. D. and N. O. his only daughters and co-heiresses at law: AND WHEREAS the said N. O. made her will, dated the — day of —, and thereby devised all her real estate unto the said E. F. and G. H., as tenants in common, in equal shares: AND WHEREAS the said N. O. died on the — day of —, without having revoked or altered her said will, which was shortly afterwards duly proved in the Probate Registry at — of the High Court of Justice: AND WHEREAS (*Recite mortgage by C. D. of her share to A. B. to secure £200, and that principal sum is due—Agreement by C. D., E. F., and G. H. for the sale of the property to I. K. for £1000—Agreement that A. B.'s mortgage debt shall be paid out of the share of C. D. in the purchase-money*): NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £200 to the said A. B., the sum of £300 to the said C. D., the sum of £250 to the said E. F., and the sum of £250 to the said G. H., respectively, paid by the said I. K., on or before the execution of these presents (the receipt of which several sums making together the said purchase-money of £1000 the said A. B., C. D., E. F. and G. H. respectively hereby acknowledge), THE SAID A. B., as mortgagee, as to one undivided moiety of the hereditaments hereinafter described by the direction of the said C. D., as beneficial owner, hereby conveys, and the said C. D., as beneficial owner, as to the same

moiety hereby conveys and confirms, AND the said E. F., as beneficial owner, as to one undivided fourth part or share of the said hereditaments, AND the said G. H., as beneficial owner, as to the remaining one undivided fourth part or share of the said hereditaments, hereby respectively convey unto the said I. K. (*parcels—habendum to I. K. in fee simple*).

IN WITNESS, &c.

CONVEYANCE
BY SURVIVING
COFARCENERS
AND HER
MORTGAGEE
AND DEVISEES
IN COMMON OF
DECEASED
COFARCENER.

No. LI.

CONVEYANCE of FREEHOLDS to TENANTS in COMMON,
who ADVANCE the PURCHASE-MONEY in EQUAL SHARES.

CONVEYANCE
OF FREEHOLDS
TO TENANTS IN
COMMON.

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c., and E. F. of, &c. (*purchasers*), of the other part, WITNESSETH, that in consideration of the sum of £— as purchase-money to the said A. B., paid by the said C. D. and E. F. in equal shares, on or before the execution of these presents (*the receipt, &c.*), THE SAID A. B., as beneficial owner, hereby conveys unto the said C. D. and E. F., ALL, &c. (*parcels*): To HOLD the same unto and to the use of the said C. D. and E. F. as tenants in common in fee simple.

Parties.

Witnessing
part.

Conveyance
of freeholds
to the use of
purchasers as
tenants in
common.

IN WITNESS, &c.

No. LII.

CONVEYANCE of FREEHOLDS to PURCHASER under a
Power of ATTORNEY executed by the VENDOR, who is
abroad (z).

CONVEYANCE
UNDER POWER
OF ATTORNEY.

THIS INDENTURE, made the — day of —. (*This deed will be in the same form as if it were to be executed by the* Parties.

(z) If the power is made irrevocable for a period not exceeding one year, and the conveyance is made within that period, the purchaser need make no inquiry as to the donor being still living. See Conveyancing Act, 1882, s. 9. He should require that the power be deposited in the Central Office under sect. 48 of the Conveyancing Act, 1881.

Where power
made irrevocable for one
year.

**CONVEYANCE
UNDER POWER
OF ATTORNEY.**

vendor personally, and no reference need be made in the body of the deed to the power of attorney. It will be executed by the attorney in the name of the principal, thus, A. B. by E. F. his attorney, and the attestation clause will be "signed, sealed, and delivered by the said A. B. by E. F., his attorney, in the presence of, &c.")

No. LIII.

**CONVEYANCE
BY MORTGAGEE
HAVING POWER
OF SALE AND
CLAIMING AS
ABSOLUTE
OWNER.**

CONVEYANCE by MORTGAGEE whose MORTGAGE DEED contains POWER of SALE, and who claims ABSOLUTE OWNERSHIP as having been in POSSESSION for TWELVE (a) YEARS without ACKNOWLEDGMENT of MORTGAGOR'S TITLE (b).

Parties.

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: WITNESSETH, that in consideration of the sum of £—— as purchase-money to the said A. B. paid by the said C. D. on or before the execution of these presents (*the receipt, &c.*), the said A. B., as beneficial owner, hereby conveys unto the said C. D., ALL (*parcels*), To HOLD the same unto and to the use of the said C. D. in fee simple.

Mortgagee and
vendor convey
parcels,
to purchaser
in fee.

IN WITNESS, &c.

(a) Twelve years are now substituted for twenty years by 37 & 38 Vict. c. 57, s. 7.

(b) This form of conveyance is intentionally prepared without recitals. In one way or another the purchaser will get a good title. If the mortgagee has acquired an absolute ownership under the Statutes of Limitation, he can sell under such ownership. If, however, any question should arise as to the completeness of this ownership, the conveyance will operate as an execution of the power of sale without any express reference to it, and thus the existence of this power, and its exercise if required, obviate the necessity of the vendor proving his uninterrupted possession for the required period, and prevent the purchaser on the other hand from depending on an unmarketable title. (*Johnson v. Mounsey*, 11 Ch. D. 284.) It is assumed that the mortgage contains a clause making it unnecessary for the purchaser to ascertain that any moneys are due on the security, or whether the required notice has been given.

No. LIV.

CONVEYANCE of FREEHOLDS to two PARTNERS, where
the PURCHASE is made out of the PARTNERSHIP
ASSETS (c).

CONVEYANCE
OF FREEHOLDS
TO TWO
PARTNERS.

THIS INDENTURE, made, &c., BETWEEN A. B. of, &c. Parties.
(*vendor*), of the one part, and C. D. and E. F. both of, &c., being
co-partners in the trade or business of —, at —, and
carrying on the same under the style or firm of — (*purchasers*),
of the other part: WITNESSETH, that in consideration of Consideration.
the sum of £— as purchase-money to the said A. B. paid by
the said C. D. and E. F. out of partnership money on or before
the execution of these presents (*the receipt, &c.*), THE said A. B., Conveyance
as beneficial owner, hereby conveys unto the said C. D. and of parcels
E. F., ALL, &c. (*parcels*): To HOLD the same unto and to to partners as
the use of the said C. D. and E. F. in fee simple as part of the
part of their partnership property. [PROVIDED ALWAYS (*d*), partnership
that if either of the said partners shall die during the con- property.
tinuance of the partnership the survivor of them may sell Power to sur-
the said hereditaments for the purpose of winding up the viving partner
partnership affairs without the concurrence of the executors or to sell.
administrators of the deceased partner, and the receipt of such
survivor for the purchase-money shall effectually discharge the
person paying the same therefrom, and from all liability to see
to the application thereof.]

IN WITNESS, &c.

(c) Where real estate is bought with partnership money for partnership Proper form
purposes, the conveyance is sometimes taken in the name of the partners of conveyance
as tenants in common without disclosing the partnership. This is a con- on purchase
venient plan in a simple case, *e.g.*, where there are only two partners, by partners.
entitled in equal shares.

But the form given above is recommended for general adoption. Under
it the partners take the legal estate as joint tenants, and on the death of
one of them the property will be liable to be sold and the proceeds divided
as part of the partnership assets, unless the partnership articles provide
for a different arrangement. It is considered that in the absence of any
such arrangement the surviving partner can make a good title to a pur-
chaser without the concurrence of the representatives of the deceased partner
(Dart, 94, 6th edition); but it seems desirable, to prevent any question,
to insert an express provision to that effect in the deed of conveyance.

(d) This proviso will be omitted if the partnership articles provide that,
on the death of a partner, his share shall be taken by the surviving part-
ner at a valuation, so that a sale will be unnecessary.

No. LV.

BY SURVIVING
PARTNER AND
REPRESENTA-
TIVES OF
DECEASED
PARTNER.

CONVEYANCE on a SALE by SURVIVING PARTNER and
the REPRESENTATIVES of a DECEASED PARTNER (e).

Parties.

Recite that
deceased and
surviving
partners
carried on
business.
Conveyance
to partners.

Death of one.

Agreement
for sale.

Consideration.

Conveyance
by surviving
partner and
confirmation
by representa-
tives of de-
ceased partner
to purchaser.

THIS INDENTURE, made the — day of —, 18—, BETWEEN A. B. of, &c. (*surviving partner*), of the first part, C. D. of, &c., and E. F. of, &c. (*executors of deceased partner*), of the second part, and G. H. of, &c. (*purchaser*), of the third part: WHEREAS at the date of the hereinafter recited indenture the said A. B. and L. M., since deceased, carried on the business of — at — as partners: AND WHEREAS by an indenture dated, &c., and made, &c., the hereditaments hereinafter described were conveyed unto and to the use of the said A. B. and L. M. in fee simple as part of their partnership property: AND WHEREAS, &c. (*Recite death of L. M. and his will appointing C. D. and E. F. executors, and probate of the will by them*): AND WHEREAS the said A. B. as the surviving partner, with the concurrence of the said C. D. and E. F. as the personal representatives of the said L. M., deceased, and with a view to the winding-up of the affairs of the said late partnership, has agreed with the said I. K. to sell to him the said hereditaments and the fee simple thereof free from incumbrances at the price of £—: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £— to the said A. B. (f) paid by the said I. K. on or before the execution of these presents, with the consent of the said C. D. and E. F., testified by their executing these presents (the receipt whereof the said A. B. hereby acknowledges), THE SAID A. B. as beneficial owner hereby conveys, and the said C. D. and E. F. as such personal representatives as aforesaid hereby release and confirm unto the said G. H., ALL, &c. (*parcels*), To HOLD the same unto and to the use of the said G. H. in fee simple.

IN WITNESS, &c.

(e) Where the representatives of a deceased partner are willing to concur, it is desirable to make them parties, particularly if there is no clause in the deed of conveyance to the partners dispensing with their concurrence. See note at p. 285.

(f) The surviving partner is the proper person to receive and apply the purchase-money.

No. LVI.

RELEASE *by the EXECUTORS of a DECEASED PARTNER* BY EXECUTORS OF DECEASED PARTNER TO SURVIVING PARTNER.
to the SURVIVING PARTNERS of his SHARE in partnership REAL ESTATE on payment of the VALUE thereof.

THIS INDENTURE, made the — day of —, 18—,
 BETWEEN E. F. of, &c., and G. H. of, &c. (*executors of deceased partner*), of the one part, and A. B. of, &c., and C. D. of, &c. (*surviving partners*), of the other part: WHEREAS at the date of the next hereinafter recited indenture the said A. B. and C. D., and L. M., since deceased, carried on the business of — at — as partners: AND WHEREAS by an indenture dated, &c., and made, &c., ALL that, &c. (*parcels*) were conveyed unto and to the use of the said A. B., C. D., and L. M. as part of their partnership property: AND WHEREAS, &c. (*Recite death of L. M., and his will appointing E. F. and G. H. executors*): AND WHEREAS the said A. B. and C. D. are continuing to carry on the said business in partnership, and it has been agreed between them and the said E. F. and G. H. that the hereditaments comprised in the said indenture shall not be sold, but shall belong to the said A. B. and C. D. as part of their partnership property on their paying to the said E. F. and G. H. the sum of £—, being the estimated value of the share of the said L. M. therein. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £— to the said E. F. and G. H. paid by the said A. B. and C. D. out of moneys belonging to them as partners on or before the execution of these presents (the receipt whereof the said E. F. and G. H. hereby acknowledge), THE said E. F. and G. H., as the personal representatives of the said L. M., deceased, hereby release unto the said A. B. and C. D., ALL the share, right, title, and interest, late of the said L. M., deceased, of, in and to ALL AND SINGULAR the hereditaments comprised in and conveyed by the hereinbefore recited indenture, To HOLD the same unto and to the use of the said A. B. and C. D. in fee simple as part of their partnership property.

IN WITNESS, &c.

Parties.

Recite that partners carried on business.

Conveyance to them.

Death of one.

That surviving partners are carrying on business.

Agreement for sale of share of deceased partner to survivors.

Consideration.

Executors of deceased partner release his share to surviving partners.

No. LVII.

CONVEYANCE
TO PARTNERS
AS TENANTS
IN COMMON.

CONVEYANCE to PARTNERS as TENANTS IN COMMON
*where it is intended that the PROPERTY shall not be
CONVERTED into PERSONALTY as between the partners (g).*

Parties.

Conveyance
to partners as
tenants in
common.

Declaration
as to user and
title to the
property.

THIS INDENTURE, made the — day of —, 18—,
BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of,
&c., and E. F. of, &c., carrying on the business of —, at —,
as partners (*purchasers*), of the other part (*Conveyance to C. D. and
E. F. as tenants in common, as in Precedent No. 51*): AND IT IS
HEREBY AGREED AND DECLARED between and by the said C. D.
and E. F. that during the continuance of their partnership the
hereditaments hereby conveyed shall be used by them for the
purpose of their business, and for no other purpose, unless they
shall otherwise agree, but (subject to such user) the same shall
be and remain the real estate of the said C. D. and E. F. in
undivided moieties in equity as well as at law, and shall not be
liable to be converted into money on the dissolution of the part-
nership by death or otherwise.

IN WITNESS, &c.

No. LVIII.

CONVEYANCE
BY EXECUTOR
OF LAST
SURVIVING
TRUSTEE FOR
SALE.

CONVEYANCE of FREEHOLDS by the LEGAL PERSONAL
REPRESENTATIVE of the SURVIVOR of two TRUSTEES for
SALE (*h*).

Parties.

THIS INDENTURE, made the — day of —, BETWEEN
A. B. of, &c. (*executor of last surviving trustee and vendor*), of the
one part, and C. D. of, &c. (*purchaser*), of the other part. (*Re-*

(*g*) It is clear that partners may, by express agreement, negative the
equitable doctrine of conversion. In that case the property will remain
real estate, and not be subject to probate duty. (See *Att.-Gen. v. Hub-*
buck, 13 Q. B. D. 275.)

(*h*) See *supra*, p. 266.

cite will whereby the testator devised a messuage and other hereditaments in the county of — to E. F. and G. H., upon trust for sale, as therein mentioned. Death of testator and probate of his will.) AND WHEREAS the said G. H. died on the — day of —, leaving the said E. F. his co-trustee him surviving: AND WHEREAS the said E. F. died on the — day of —, having first made his will, dated, &c., whereby he appointed the said A. B. sole executor thereof, and which will was duly proved by the said A. B. on the — day of — in the principal Probate Registry of the High Court of Justice: AND WHEREAS, pursuant to the trust in this behalf contained in the said will, the said A. B., as the personal representative of the said E. F., hath agreed to sell to the said C. D. the said messuage and hereditaments at the price of £—: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B., as such personal representative as aforesaid, hereby conveys unto the said C. D., ALL, &c., (*parcels*). To HOLD the same unto and to the use of the said C. D. in fee simple.

IN WITNESS, &c.

CONVEYANCE
BY EXECUTOR
OF LAST
SURVIVING
TRUSTEE FOR
SALE.

Death of one
trustee, leav-
ing his
co-trustee
surviving.

Death of sur-
viving trustee.

Will of sur-
viving trustee
appointing
executor.

Agreement by
executor to
sell, under
trust for sale,
contained in
first recited
will.

Conveyance by
executor of
last surviving
trustee of
parcels
to purchaser
in fee.

No. LIX.

CONVEYANCE (i) of FREEHOLDS and BARGAIN and SALE
of COPYHOLDS, by TRUSTEES for SALE under a WILL (k).

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c., and C. D. of, &c. (*vendors*), of the one part, and E. F. of, &c. (*purchaser*), of the other part: WHEREAS X. Y., late of, &c., deceased, being seised in fee simple of the freehold hereditaments hereinafter described, and being seised in customary fee simple of the copyhold hereditaments hereinafter described,

CONVEYANCE
OF FREEHOLDS
AND BARGAIN
AND SALE OF
COPYHOLDS
BY TRUSTEES
FOR SALE.

Parties.
Recite will of
X. Y.

(i) See *suprà*.

(k) This deed contains no recital of the apportionment of the purchase-money as between the freeholds and copyholds, since, for the purpose of the Stamp Act, there being no surrender of the latter, the deed of conveyance is the principal instrument for both properties. (See *suprà*, p. 246.)

CONVEYANCE
OF FREEHOLDS
AND BARGAIN
AND SALE OF
COPYHOLDS
BY TRUSTEES
FOR SALE.

Death of
testator.

Agreement
for sale.

First witness-
ing part.

Conveyance
of freeholds
to purchaser
in fee.

Second wit-
nessing part.

Bargain and
sale of copy-
holds
to purchaser.

subject to the rents, suits, and services therefor due and of right accustomed, made his will, dated, &c.; and thereby appointed the said A. B. and C. D. to be trustees of his said will, and, after certain specific bequests of personal estate, devised and bequeathed all his real estate not being of copyhold tenure, and all his personal estate not thereinbefore specifically bequeathed unto and to the use of his said trustees; and he thereby devised all his messuages, lands, and hereditaments, being of copyhold tenure to such uses as his said trustees should by any deed or deeds to be executed within twenty-one years after his (the said testator's) decease, appoint; And the said testator thereby declared that his trustees should sell and convert into money the said real and personal estate, including the said copyhold hereditaments, and out of the moneys to arise from such sale should pay the said testator's funeral and testamentary expenses and debts and the legacies bequeathed by his said will, and should invest the residue of the said moneys in the manner therein mentioned: AND WHEREAS the said testator died on the — day of —, without having revoked or altered his said will so far as the same is hereinbefore recited, and the said will was shortly afterwards duly proved in the principal Probate Registry of the High Court of Justice: AND WHEREAS in exercise of the trust for that purpose contained in the said will, the said A. B. and C. D. have agreed to sell the said freehold and copyhold hereditaments hereinafter described to the said E. F., at the price of £—: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*) the said A. B. and C. D. as trustees hereby convey unto the said E. F., ALL, &c. (*freehold parcels, &c., habendum unto and to the use of E. F. in fee simple, supra, p. 225*): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B. and C. D. as trustees, in exercise of the power for this purpose given to them by the said will of the said X. Y. as aforesaid, and of all other powers, if any, in any wise enabling them in this behalf, hereby bargain, sell, and appoint unto the said E. F., ALL, &c. (*copyhold parcels*): To HOLD the same unto and to the use of the said E. F., in customary fee simple, according to the custom of the said manor, by and under the rents, suits, and services therefor due and of right accustomed. And the said A. B. and C. D.

hereby acknowledge the right of the said E. F. to production and delivery of copies of the documents mentioned in the schedule hereto, which documents are retained by them as relating also to other property.

IN WITNESS, &c.

CONVEYANCE
OF FREEHOLDS
AND BARGAIN
AND SALE OF
COPYHOLDS
BY TRUSTEES
FOR SALE.

THE SCHEDULE ABOVE REFERRED TO.

No. LX.

CONVEYANCE (k) of FREEHOLDS by TRUSTEES under a
TESTAMENTARY TRUST for SALE. The CESTIUS QUE
TRUST join so as to make themselves liable to STATUTORY
COVENANTS for TITLE (l).

CONVEYANCE
BY TRUSTEES
AND CESTIUS
QUE TRUST.

THIS INDENTURE, made the — day of —, BETWEEN Parties.
A. B. of, &c., and C. D. of, &c. (*trustees for sale*), of the first
part, E. F. of, &c., and G. H. of, &c. (*parties beneficially interested
in the moneys to be produced by the sale*), of the second part, and
M. N. of, &c. (*purchaser*), of the third part (*Recite will of O. P.,
whereby he devised (inter alia) the hereditaments hereinafter de-
scribed unto and to the use of the said A. B. and C. D., their heirs
and assigns, upon trust to sell and to apply the moneys to arise
therefrom upon trust to pay the testator's debts, and the legacies
bequeathed by his will, and to stand possessed of the residue of
the said moneys in trust for his the said testator's children equally,
who being a son or sons should attain the age of twenty-one years,
and being a daughter or daughters should attain that age or marry,
and if more than one in equal shares,—death of testator and*

(k) See *supra*, p. 139.

(l) It is usual, when trustees have an effectual power of sale, to stipulate that the concurrence of the *cestuis que trust* shall not be required, and, indeed, without any such stipulation, their concurrence could not be insisted on. But there may be circumstances, e. g., where the *cestuis que trust* have been in possession, so as to raise a question of election, in which case it would be desirable and proper to make them parties. (*Supra*, p. 198.)

CONVEYANCE
BY TRUSTEES
AND CESTUIS
QUE TRUST.

Agreement
by trustees for
sale.

That there
were issue two
children who
have attained
twenty-one.

Agreement by
children to
join.

Conveyance
by trustees,

and confirma-
tion by cestuis
que trust.

probate of his will): AND WHEREAS, pursuant to the trust for this purpose contained in the said recited will as aforesaid, the said A. B. and C. D. have agreed to sell the hereditaments hereinafter described to the said M. N. at the price of £— : AND WHEREAS there were issue of the said testator living at his death two children and no more, namely, the said E. F. and G. H., and the said E. F. and G. H. have respectively attained the age of twenty-one years: AND WHEREAS for the satisfaction of the said M. N. the said E. F. and G. H. have consented to join in these presents in manner hereinafter mentioned: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £— to the said A. B. and C. D. paid by the said M. N. on or before the execution of these presents, with the privity of the said E. F. and G. H., (*the receipt, &c.*), THE SAID A. B. and C. D. as trustees, by the direction of the said E. F. as beneficial owner as regards one undivided moiety of the hereditaments hereinafter described, and by the direction of the said G. H. as beneficial owner as regards the other undivided moiety thereof, hereby convey, and the said E. F. and G. H. hereby confirm unto the said M. N., ALL, &c. (*parcels, habendum to M. N. in fee simple.*)

IN WITNESS, &c.

No. LXI.

CONVEYANCE
UNDER
TESTAMENTARY
TRUST—
CESTUIS QUE
TRUST, HAVING
VARIOUS IN-
TERESTS, JOIN.

CONVEYANCE *under a TESTAMENTARY TRUST for SALE by NEW TRUSTEES appointed under a POWER in the WILL—CESTUIS QUE TRUST being NUMEROUS, and having VARIOUS INTERESTS, join so as to make themselves liable to STATUTORY COVENANTS for TITLE.*

Parties.

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c., and C. D. of, &c. (*trustees*), of the first part (*persons beneficially interested in the proceeds of the sale being very numerous, and having various interests*), of the second part, and M. N. of, &c.

(*purchaser*), of the third part (*Recite will of O. P. devising the property to A. B. and X. Y., in trust for sale, and directing the trustees to stand possessed of the net proceeds upon trusts creating various interests, and power to appoint new trustees,—death of testator and probate of will*): AND WHEREAS by a deed poll dated the — day of —, under the hand and seal of the said X. Y., the said X. Y. disclaimed all real and personal estate devised and bequeathed by the said will, and all trusts, powers, and authorities whatsoever by the said will reposed in and given to him jointly with the said A. B., and all rights and privileges relating thereto: AND WHEREAS by an indenture dated, &c., and made, &c., the said C. D. was in exercise of the power in that behalf so as aforesaid contained in the said will, duly appointed to be a trustee of the said will in the place of the said X. Y.; and by the said indenture all the real and personal estate by the said will devised and bequeathed unto and to the use of the said A. B. and X. Y. as aforesaid was conveyed and assigned so as to become vested in the said A. B. and C. D., upon the trusts declared thereof by the said will (*Recite agreement for sale by A. B. and C. D., and agreement by "the several persons parties hereto of the second part," to join, supra, p. 292*): NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B. and C. D. as trustees by the direction of the several persons parties hereto of the second part as beneficial owners, each of whom shall be deemed to direct as beneficial owner to the extent only of a share and interest in the said hereditaments corresponding with his or her beneficial interest in the proceeds thereof as hereinbefore appears, do hereby convey, and the said several persons parties hereto of the second part, do hereby respectively confirm unto the said M. N., ALL, &c. (*parcels, &c., habendum to M. N. in fee simple*): AND THE SAID A. B. and C. D. hereby acknowledge the right of the said M. N. to production and delivery of copies of the said recited deed poll and indenture dated respectively the — day of — and the — day of —.

IN WITNESS, &c.

CONVEYANCE
UNDER
TESTAMENTARY
TRUST—
CESTUIS QUE
TRUST, HAVING
VARIOUS IN-
TERESTS, JOIN.

Recite will and
death of tes-
tator.

Disclaimer by
trustee.

Appointment
of new trustee.

Witnessing
part.

Conveyance
by vendors to
purchaser in
fee.

Acknowledg-
ment by
vendors of
right to
production of
recited deeds.

No. LXII.

TO ONE OF
SEVERAL TRUS-
TEES FOR SALE
WITH CONSENT
OF BENE-
FICIARIES.

CONVEYANCE of FREEHOLDS by TRUSTEES for SALE—
*one of the Trustees being the PURCHASER, with the
CONSENT of the persons beneficially INTERESTED in the
SALE MONEYS.*

Parties.

Recite will
devising real
estate to
trustees
in trust to sell
and to hold
proceeds

in trust for
wife for life,
and after de-
cease of wife,
in trust for
children
equally.

That testator
left only two
children.

That heredita-
ments form
part of real
estate com-
prised in will.
Proposal that
one of the
trustees shall
purchase.

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c., and C. D. of, &c. (*trustees for sale*), of the first part, E. F. of, &c., G. H. of, &c., and L. M. of, &c. (*the persons beneficially interested in the sale moneys*), of the second part, and the said C. D. (*purchaser*), of the third part: WHEREAS O. P., late of, &c., deceased, made his will, dated, &c., and thereby devised all his real estate to the said A. B. and C. D., their heirs and assigns, upon trust to sell the same, and to stand possessed of the moneys arising from such sale in trust thereout in the first place to pay the costs and expenses attending such sale, and to invest the residue of the said moneys as in the said will is mentioned, and to pay the income of the said residuary moneys, stocks, funds and securities to the said E. F., the wife of the said testator, during her life, and the said testator by his said will declared that after the decease of the said E. F. the said residuary moneys, and the stocks, funds, and securities in which the same might be invested, should go and be in trust for all the children of the said O. P., who being sons should attain the age of twenty-one years, or being daughters, should attain that age or marry, in equal shares as tenants in common, and the said testator appointed the said A. B. and C. D. executors of his said will (*Death of O. P., and probate of his will*): AND WHEREAS there were issue of the said O. P. living at his decease, two children, and no more, namely, the said G. H. and L. M., both of whom have attained the age of twenty-one years: AND WHEREAS the hereditaments hereinafter described form a portion of the real estate devised by the said will: AND WHEREAS the said C. D. has proposed to the said E. F., G. H., and L. M., that he should purchase the said hereditaments at the price of £—, notwithstanding that he is a trustee for the sale thereof, and the said

E. F., G. H., and L. M. having satisfied themselves that the sum of — is the full value of the said hereditaments, have agreed to such proposal: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £— to the said A. B. and C. D. as the trustees of the said will paid by the said C. D., on or before the execution of these presents, at the request of the said E. F., G. H., and L. M. (*the receipt, &c.*), the said A. B., as trustee, doth hereby convey, and each and every of them the said E. F., G. H., and L. M. as to a share and interest in the said hereditaments corresponding to her and his beneficial share and interest in the proceeds thereof, as beneficial owner, hereby conveys and confirms unto the said C. D., ALL, &c. (*parcels*), To HOLD the same unto and to the use of the said C. D., in fee simple.

IN WITNESS, &c.

TO ONE OF
SEVERAL TRUS-
TEES FOR SALE
WITH CONSENT
OF BENE-
FICIARIES.

Persons
interested in
proceeds
assent to
proposal.
Consideration.
Trustees at
request of
cestuis que
trust of
moneys
convey,
and *cestuis que*
trust confirm
parcels
to grantee to
use of the pur-
chaser in fee.

No. LXIII.

CONVEYANCE by TRUSTEES under a POWER of SALE in
a SETTLEMENT at the request of the TENANT for LIFE,
and with the CONSENT of his MORTGAGEE (*m*).

THIS INDENTURE, made the — day of —, BETWEEN
A. B. of, &c., and C. D. of, &c. (*trustees*), of the first part, E. F.

CONVEYANCE
BY TRUSTEES
UNDER POWER
IN SETTLEMENT
AT REQUEST OF
TENANT FOR
LIFE, AND
WITH CON-
SENT OF
MORTGAGEE.

Parties.

(*m*) When a power of sale and exchange is to be exercised by trustees with the consent of the tenant for life, it is important to ascertain that the tenant for life has done no act to suspend or extinguish the power, or rather no act to prevent him from giving the consent which it is necessary for the trustees to obtain in order to exercise the power. A mortgage by a tenant for life does not prevent his consenting to an exercise of the power, provided he obtains the concurrence of the mortgagee. (*Walmisley v. Butterworth*, Sug. Pow. 64, 7th ed.) And it has been decided that an absolute alienation by the tenant for life of his life estate does not prevent his giving the required consent, provided he obtains also the concurrence of the alienee. (*Alexander v. Mills*, L. R. 6 C. A. 124. See also *Cooper v. Slight*, 27 Ch. D. 565.) So, also, if the tenant for life becomes bankrupt, the power may be exercised with the united consent of the bankrupt and the trustee in bankruptcy of the estate. (*Holdsworth v. Goose*, 29 Beav. 111.) In a case where trustees of a marriage settlement were empowered to invest the trust moneys in land, and to resell the

Powers of sale
and exchange
when affected
by disposition
of estate of
tenant for life.

CONVEYANCE
BY TRUSTEES
UNDER POWER
IN SETTLEMENT
AT REQUEST OF
TENANT FOR
LIFE, AND
WITH CON-
SENT OF
MORTGAGEE.

of, &c. (*tenant for life*), of the second part, G. H. of, &c. (*mortgagee*), of the third part, and I. K. of, &c. (*purchaser*), of the fourth part: WHEREAS by an indenture dated the — day of —, and made, &c. (being a settlement made in contemplation of the marriage then intended and shortly afterwards solemnized between the said E. F. and L. M., spinster, now L. his wife), the hereditaments hereinafter described were (with other hereditaments) conveyed to the use of the said E. F. and his assigns during his life without impeachment of waste (*n*), with divers

land with the consent of the tenant for life, it was held that the tenant for life's power to consent to a resale of the lands which the trustees purchased was not destroyed by the absolute alienation by the tenant for life of all his life estate in the moneys and securities, and the hereditaments into which the moneys, stocks, funds, and securities were or at any time thereafter might be converted and changed. (*Warburton v. Farn*, 16 Sim. 625.) The concurrence of the protector of a settlement in a disentailing assurance, in which his own life estate is reserved, will not destroy his right of consenting to the exercise of a power of sale under the settlement. (*Hill v. Pritchard*, Kay, 394.)

Consent, how
to be given.

When a power of sale is to be exercised with consent, the better opinion is that the consent must be given to the particular sale, and that a general prospective consent to a sale would be insufficient. Where, however, the donee of a power is authorised to sell by auction with consent, a direction by the consenting party that the property be sold by auction is sufficient; for such a direction amounts to a consent to a sale to the purchaser at the particular price at which the property should be knocked down to him at the auction, and this is all which could possibly be done in such a case. If the donee of a power enters into a contract for sale before obtaining the requisite consent, the purchaser will be bound if the consent is obtained before an action is commenced by the vendor for specific performance. (*Adams v. Brooke*, 1 Yo. & C. N. C. 627.) Under the 16 & 17 Vict. c. 70, ss. 136, 137, if a consenting party becomes a lunatic, the committee can consent by direction of the Lord Chancellor.

Since the passing of the Settled Land Act, 1882, it is generally better to let the sale be made by the tenant for life under the powers conferred by that Act, which powers override those conferred by the deed so that the latter cannot be exercised without the consent of the donee of the former. (Sect. 56.)

Tenant for life
without im-
peachment of
waste.

(*n*) A tenant for life *without impeachment of waste* is entitled to cut down all the timber upon the estate except such as was planted or was left standing for the ornament or shelter of the mansion-house or residence. Previously to the Judicature Act, 1873, it was within his legal power to fell the ornamental timber, but a Court of Equity would not permit him to make, as it is termed, an unconscionable use of this power, and would therefore restrain him not only from felling such timber (*Rolt v. Lord Somerville*, 2 Eq. Ca. Abr. 759); but also from pulling down the mansion-house, farm-houses, and other buildings on the estate (*Vane v. Lord Barnard*, 2 Vern. 738; *Aston v. Aston*, 1 Ves. 265), or from cutting saplings or young trees not fit to be cut for the purpose of timber (*Chamberlayne v. Dummer*, 1 Br. C. C. 166), or underwood of insufficient growth (*Brydges v. Stephens*, 6 Madd. 279), or from destroying the underwood, or from grubbing up a wood that is settled. (*Aston v. Aston*, *ubi supra*.) Any such unconscionable use of the legal power is termed *equitable waste*.

remainders over: AND in the said indenture is contained a power enabling the said A. B. and C. D., and the survivor of them, and the executors or administrators of such survivor, at the request of the said E. F. during his life, to sell the heredi-

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BY TRUSTEES
UNDER POWER
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LIFE, AND
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SENT OF
MORTGAGEE.

(*Micklethwait v. Micklethwait*, 1 De G. & J. 104.) And under the Judicature Act, 1873, a tenant for life without impeachment of waste has no legal right to commit equitable waste.

In order to make the cutting of ornamental trees equitable waste they must be connected with a mansion-house or residence. It follows that if the settlor or testator prior to the settlement pulls down the mansion-house with no intention of rebuilding it, and without showing by the settlement or will that he contemplated future building upon the estate, as by the insertion of powers to grant building leases, the timber will not be protected. (*Micklethwait v. Micklethwait*, *ubi supra*; *Wellesley v. Wellesley*, 6 Sim. 497; *Morris v. Morris*, 15 Sim. 505.)

When the cutting of ornamental trees is equitable waste.

If the ornamental trees are so near to the house as to be prejudicial to its healthiness, or are so placed as to injure or impede the growth of any other trees adjoining thereto, which are of so much importance to the purposes of ornament or shelter, that the removal of the timber is essential to such purposes of ornament or shelter, their removal will be justified. (*Lushington v. Boldero*, 6 Madd. 149; *Campbell v. Allgood*, 17 Beav. 623.) There are other cases in which the felling of ornamental timber by a tenant for life will be regarded with approval, "for," to use the words of Sir W. Grant, "if a tempest had produced gaps in a piece of ornamental planting, by which unequal and discordant breaks and divisions were occasioned, it would be going too far to hold that cutting a few trees to produce an uniform and consistent instead of an unpleasant and disjointed appearance should be construed waste." (*Lord Mahon v. Lord Stanhope*, 3 Madd. 523.)

When ornamental trees may be cut.

Whenever ornamental timber is cut by the order of the Court during the life of a tenant for life without impeachment of waste or is rightfully cut by him, it seems clear that the proceeds will be his absolute property (*Yool on Waste*, p. 50); and although in strictness the Court is the only proper judge of what ought to be cut when the consent of the persons entitled in remainder cannot be obtained, yet every tree which the tenant severs upon his own responsibility, and the severance of which would have been approved if application had been made to the Court for the authority, is regarded for this purpose as rightfully cut. (*Waldo v. Waldo*, 12 Sim. 107; *Baker v. Sebright*, 13 Ch. D. 179.) A tenant for life without impeachment of waste will also be absolutely entitled to the produce of all timber blown down by the wind.

Proceeds of ornamental timber cut by order of Court.

If ornamental timber is wrongfully cut, the tenant will not be allowed to derive any advantage from his wrongful act, but the proceeds must be invested and accumulated for the benefit of those entitled in remainder. (*Lushington v. Boldero*, 15 Beav. 1; *Yool*, 48.)

As to ornamental timber wrongfully cut.

In judging whether timber is ornamental in the equitable sense, it must be borne in mind that it is not protected because it is ornamental, but because it was planted or left standing for ornament. (*Coffin v. Coffin*, 6 Madd. 17.) The taste of the settlor or author of the interest created, and not that of the tenant for life or of the Court, must determine the question. In *Marquis of Downshire v. Lady Sandys* (6 Ves. 107, 110), where the Court granted its protection to clumps of firs on a common two miles from the house, although the lands of other persons separated the residence from the common, Lord Eldon made the following remarks:—"The principle," he says, "upon which the Court has gone

To be ornamental, it must have been planted or left standing for ornament.

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LIFE, AND
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MORTGAGEE.

taments thereby settled, either together, &c. (*recite power of sale and to revoke uses, or any part thereof, as in settlement*): AND

Powers of
tenant in tail
as to the
cutting of
timber.

seems to be, that if the testator or author of the interest by deed had gratified his own taste by planting for ornament, though he had adopted the species the most disgusting to the tenant for life, and the most agreeable to the tenant in tail, and upon a competition between the parties the Court should see that the tenant for life was right and the other wrong in point of taste, yet the taste of the testator, like his will, binds them." "The principle has been extended from the ornament of the house to outhouses and grounds, then to plantations, vistas, avenues, and to all the rides about the estate for ten miles round." The prohibition above mentioned extends to all trees planted for ornament or shelter by the tenant for life himself. (*Coffin v. Coffin*, Jac. 71.)

A tenant in tail in possession is entitled, without executing a disentailing assurance, to exercise absolute ownership over the buildings and timber on the estate. He may, therefore, pull down the mansion-house or other buildings and fell all the timber, whether it was or was not planted or left standing for ornament or shelter. He is, in a word, neither responsible for legal nor for equitable waste. Even if the estate tail had been created by statute, under which the tenant is prohibited from barring the entail and the remainders over, he will not be responsible for any kind of waste, unless the statute also provides for the maintenance of the residence. (*Att.-Gen. v. Duke of Marlborough*, 3 Madd. 532.)

Tenant in tail
after possi-
bility of issue
extinct.

A tenant in tail, after possibility of issue extinct, and a tenant in fee with an executory devise over in the event of his dying without leaving issue, have respectively the same privileges as a tenant for life without impeachment of waste, *i. e.*, they are liable for equitable but not for legal waste. (*Williams v. Williams*, 15 Ves. 428; *Turner v. Wright*, 2 De G. F. & J. 234.)

Position of
tenant for life
who is not
made unim-
peachable for
waste as to
right to timber
and other
wood.

It remains to be considered, what is the position of a tenant for life who is impeachable for waste as to the timber and other wood on the estate. First, then, if the trees are severed, or a house is destroyed, by tempest or other accident, or by a trespasser, the things so severed and destroyed will become the property of the owner of the first vested estate of inheritance (*Bewick v. Whitfield*, 3 P. Wms. 268); and that, notwithstanding that there may be an intermediate estate limited to a person for life without impeachment of waste. (*Pigott v. Bullock*, 1 Ves. jun. 484.) Secondly, if there are any trees which are decayed (unless they are required for the defence and shelter of the house or for ornament (see *Bewick v. Whitfield*, *ubi supra*), or if there are trees, the standing of which is injurious to others, it was the practice of the Court, before the Settled Land Act, 1882, to order them to be felled, and the proceeds to be invested to follow the uses of the settlement, and to direct the income of such proceeds to be paid to the tenant for life (*Tooker v. Annesley*, 5 Sim. 237; *Seagram v. Knight*, L. R. 2 C. A. 628); and if the property was limited after the estate of the first tenant for life to a second tenant for life without impeachment of waste, such second tenant was entitled to the corpus of the proceeds, if he survived the tenant in possession. (*Waldo v. Waldo*, 12 Sim. 107; *Lowndes v. Norton*, 6 C. D. 139.) If the tenant for life felled trees upon his own responsibility (*Prescott v. Prescott*, 3 Atk. 95), it was the rule of the Court, before the Settled Land Act, 1882, to allow him the income of the proceeds of all the felled timber which the Court would have ordered to be cut, if application to the Court had been made for the purpose. (*Waldo v. Waldo*, *ubi supra*.) It is now provided by the Settled Land Act, 1882, s. 35, that where a tenant for life is impeachable for waste in respect of timber, and there is on the settled land

WHEREAS by an indenture dated, &c., and made between the said E. F. of the one part, and the said G. H. of the other part,

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timber ripe and fit for cutting, he may, on obtaining the consent of the trustees of the settlement, or an order of the Court, cut and sell that timber, or any part thereof. Three fourth parts of the net proceeds of the sale are to be set aside as capital, and the other fourth part will belong to the tenant for life as rents and profits. Thirdly, as to timber wrongfully cut by a tenant for life who is impeachable for waste, the owner of the first vested estate of inheritance in remainder is entitled to the proceeds. (See 1 White & Tudor's Leading Cases in Equity, p. 765, 4th ed.; *Cavendish v. Munday*, W. N. 1877, p. 198, in which case the Master of the Rolls expressed his disapproval of the doctrine laid down by the late Lord Romilly, in *Bagot v. Bagot*, 32 Beav. 523.)

As to the right to larch plantations which have been blown down, or more or less uprooted by extraordinary gales, see *In re Harrison's Trusts*, 28 Ch. D. 220, 227; *Swinburn v. Anslie*, 30 Ch. D. 485.

Larch planta-
tions.

It seems clear that if a tenant for life who is impeachable for waste cuts down trees under twenty years' growth, which it has been necessary to fell for the purpose of improving or allowing the developement of other timber trees, he is entitled to appropriate to his own use the whole of the proceeds of the sale thereof. (*Honeywood v. Honeywood*, L. R. 18 Eq. 306.)

Right of
tenant for life
to trees under
twenty years'
growth.

A Court of Equity (and consequently the High Court of Justice since the Judicature Act) will not interfere to prevent or to remedy permissive waste on the part of a tenant for life or for years. (*Marquis of Lansdowne v. the Marchioness Dowager of Lansdowne*, 1 J. & W. 522; *Wood v. Gaynon*, Amb. 395; *Powys v. Blagrove*, 4 De G. M. & G. 448.) But it would be otherwise where the premises are devised to the tenant for life, subject to a proviso that he should keep them in repair. (*Woodhouse v. Walker*, 5 Q. B. D. 404.)

Permissive
waste.

Although a tenant for life or years who is impeachable for waste is not allowed, as a rule, to fell any of the timber on the property, he has some positive powers of cutting wood that are incident to his estate which must be mentioned here. For instance, he may cut or lop hedges, bushes, trees, &c. which are not timber, for his own benefit in a reasonable manner, but not so as to prevent the future growth; and he may take sufficient wood to repair the walls, pales, fences, hedges and ditches as he found them, and he may take for agricultural and household purposes what is known as plowbote, firebote, and housebote. (*Yool*, pp. 23, 26; *Phillips v. Smith*, 14 M. & W. 589.) He may also cut timber for the necessary repairs of the house. (*Eden on Injunctions*, 146.)

As to what
wood an ordi-
nary tenant
may cut.

A tenant for life without impeachment of waste acquires a property in the timber only in the event of its being actually felled by him during the continuance of his estate. Consequently, when, as in the precedent in the text, the sale is made by the trustees with the consent of the tenant for life, no portion of the purchase-money can be paid to the tenant for life on account of unfelled timber, and after he has given his consent to the sale, it would clearly be waste for him to fell any such timber. (*Cholmondeley v. Paxton*, 3 Bing. 207; 22 & 23 Vict. c. 35, s. 13; *Llewellyn v. Williams*, Sol. Jour., 1887, p. 128.)

When tenant
for life without
impeachment
of waste
acquires
property in
timber.

In the case of waste by a tenant in possession, the legal remedy before the passing of the Judicature Act was generally incomplete, as the action could only be brought by the person entitled to the immediate reversion or remainder in fee or in tail, so that if there was an existing intermediate estate for life, the action would not lie until after the death of the second tenant for life. Besides this, at law, the only redress was for injury

Legal and
equitable
remedies for
waste.

CONVEYANCE
BY TRUSTEES
UNDER POWER
IN SETTLEMENT
AT REQUEST OF
TENANT FOR
LIFE, AND
WITH CON-
SENT OF
MORTGAGEE.

Agreement
for sale.

Witnessing
part.
Trustees
revoke uses of
settlement,

the hereditaments hereinafter described were (with other hereditaments) demised by the said E. F. unto the said G. H., for the term of ninety-nine years, if the said E. F. should so long live, by way of mortgage for securing the payment to the said G. H. of the sum of £——, with interest thereon: AND WHEREAS the said principal sum of £—— still remains owing to the said G. H. upon the security of the last hereinbefore recited indenture: AND WHEREAS, in exercise of the said power contained in the said indenture of settlement, the said A. B. and C. D., at the request of the said E. F., and with the privity and consent of the said G. H., have agreed, &c. (*Agreement for sale to I. K.*): NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B. and C. D., as trustees, in exercise of the power for this purpose vested in them

already sustained, and the action could not be used for the purpose of restraining future waste. The equitable remedy by bill for an injunction against future waste, as well as for an account for past damage, was therefore necessary to give complete satisfaction. A Court of Equity allowed the plaintiff by bill, whilst applying for an injunction, to ask also for an account for past waste, to prevent a multiplicity of suits.

The jurisdiction of Courts of Equity now belongs to every branch of the High Court of Justice, and all the remedies which could be obtained in equity as regards waste can now be obtained in an action under the new procedure.

Remedy when
there is waste
in mines.

When there is waste in mines, the Court will grant an account, although the bill does not pray for an injunction, because the digging of mines is a sort of trade. (*Bishop of Winchester v. Knight*, 4 P. Wms. 406; *Jesus College v. Bloome*, Amb. 55.) A second tenant for life may proceed against the tenant in possession who has committed waste for an injunction to restrain him against future waste. (*Pigott v. Bullock*, *ubi supra*.)

When Statute
of Limitations
begins to run.

When timber is wrongfully cut by a tenant for life, the Statute of Limitations begins to run from the time of cutting, and not from the death of the tenant (*Seagram v. Knight*, L. R. 2 C. A. 628; *Higginbotham v. Hawkins*, *ubi supra*), unless he is the owner of the first estate of inheritance, in which case the claim against his estate may be made at any time within six years from his death. (*Birch-Wolfe v. Birch*, L. R. 9 Eq. 683.)

Common law
rule as to
timber on
glebe.
Rector's
powers to cut
for repairs.

At common law, the parson, with the consent of the patron and ordinary, might direct the timber on the glebe to be cut (*Duke of Marlborough v. St. John*, 5 De G. & Sm. 174; *Yool*, 71); but not, it seems, with the consent of the patron only. A rector in the ordinary way is entitled to cut timber for the repair of the parsonage house, and the barns and out-houses belonging thereto, and of the chancel, and also for the repair of old pews belonging to the rectory, but for no other purpose. (*Sowerby v. Fryer*, L. R. 8 Eq. 417; *Yool on Waste*, pp. 75, 76.)

What a
nurseryman
may remove.

Where a nurseryman or gardener plants trees and shrubs in the regular course of his trade, he may remove them at any time during his tenancy, provided they are not of larger growth than can be dealt with by him in his trade as a nurseryman or gardener. (*Wardell v. Usher*, 3 Scott's New Rep. 508.)

by the said recited indenture of the — day of — as aforesaid, and of all other powers (if any) then hereunto enabling, and by the direction of the said E. F., as beneficial owner, and with the consent of the said G. H., as mortgagee, HEREBY REVOKE and make void all the uses, trusts, powers, provisos, and declarations by and in the last-mentioned indenture declared and contained of and concerning the hereditaments intended to be hereby appointed, AND HEREBY APPOINT that ALL, &c. (*parcels*), shall henceforth go, remain, and be to the use of the said I. K., in fee simple: AND THE SAID E. F. hereby acknowledges the right of the said I. K. to production of the said recited indentures of settlement and mortgage respectively, and to delivery of copies thereof, and hereby undertakes for the safe custody thereof, and the said G. H. hereby acknowledges the right of the said I. K. to the production and delivery of copies of the said indenture of mortgage (*o*).

IN WITNESS, &c.

(*o*) In this case E. F. is supposed to have been the settlor as well as the tenant for life, and will be liable under the statutory covenant for title as if he had been beneficial owner in fee simple. If E. F. had not been the settlor, the following proviso should have been introduced at the end of the deed:—

“Provided always that as respects the reversion or remainder, expectant on the life estate of the said E. F. of and in the hereditaments and premises hereby appointed his covenants for title implied by law shall not extend to the acts, deeds, or defaults of any person or persons other than and besides himself and persons claiming or to claim under or in trust for him.” (See Dart, 619, 6th edition.)

CONVEYANCE
BY TRUSTEES
UNDER POWER
IN SETTLEMENT
AT REQUEST
OF TENANT FOR
LIFE, AND
WITH CON-
SENT OF
MORTGAGEE.

and appoint
parcels
to purchaser
in fee.

Proviso when
the tenant for
life is not the
settlor.

No. LXIV.

CONVEYANCE
OF FREEHOLDS
BY TENANT FOR
LIFE UNDER
POWERS OF
SETTLED LAND
ACT.

CONVEYANCE of FREEHOLDS by the TENANT for LIFE (*p*)
under the POWERS of the SETTLED LAND ACT, 1882 (*q*).

THIS INDENTURE, made the — day of —, BETWEEN
A. B. of, &c. (*tenant for life*), of the first part, C. D. of, &c.,

Parties.

Form of conveyance where tenant for life is married woman.

(*p*) If the tenant for life is a married woman, and she is entitled for her separate use, whether with or without restraint on anticipation, the conveyance will be in the same form as No. LXIV., substituting "she" for "he" and "her" for "him," when necessary. If she is not so entitled, she and her husband will convey together as beneficial owners, but the deed need not be acknowledged. (Sect. 61.)

Powers conferred on the tenant for life by Settled Land Act.

(*q*) By the 3rd section of the Settled Land Act, 1882 (which is set out at length in the Appendix to Vol. II.), a tenant for life beneficially entitled to possession of land which is the subject of a settlement as defined by sect. 2, or of any estate or interest therein, is empowered to sell the same, or any easement, right, or privilege over or in relation to the same, or to make any exchange of such land for other land, including an exchange in consideration of money paid for equality thereof, or in case of an undivided share in land to concur in making partition of the entirety, including a partition in consideration of money paid for equality of partition; and by the 20th section he is empowered by deed to convey the property sold, exchanged, or partitioned, discharged from all the provisions of the settlement, and all estates and charges subsisting or to arise thereunder, except estates and charges created for securing money raised at the date of such deed, and leases, grants at fee farm rents, easements and privileges granted or made before such date. The purchase-money must be paid either to the trustees of the settlement or into Court, at the option of the tenant for life. If it is paid to the trustees, the investment thereof must be made by them under the direction of the tenant for life, and, in default thereof, according to their own discretion. (Sect. 22.) The principal mansion-house, the demesnes thereof, and other lands usually occupied therewith, cannot be sold without the consent of the trustees of the settlement or an order of the Court. (Sect. 15.)

To whom powers of tenant for life are extended.

The powers of a tenant for life under the Act are extended to the several other persons enumerated in the 58th section when their respective estates are in possession; and sect. 2 of the Act (sub-sect. 6), provides that where there are two or more persons entitled to possession of settled land as tenants in common, or as joint tenants, or for other concurrent interests, they together shall constitute the tenant for life for the purposes of the Act.

The power of the tenant for life to sell, exchange, or partition, includes a power to enter into a contract for this purpose. (Sect. 31.)

If the estate for life of the tenant has been mortgaged or absolutely disposed of, this does not prevent him from exercising his powers of sale, &c., but the conveyance will be without prejudice to the rights of the assignee or incumbrancer. (Sect. 50.)

Notice required to be given by

The tenant for life is required by the 45th section to give notice by registered letters of his intention to make a sale, exchange, or partition to each of the trustees of the settlement, and their solicitor (if any) one

and E. F. of, &c. (*trustees*), of the second part, and X. Y., of, &c. (*purchaser*), of the third part: WHEREAS, by an indenture dated, &c., and made, &c., being a settlement made in contemplation of the marriage then intended and shortly afterwards solemnized between the said A. B. and L. M., spinster, now L. his wife, the hereditaments hereinafter described were (with other hereditaments) conveyed to the use of the said A. B. during his life, with divers remainders over, and by the said indenture the said C. D. and E. F. were empowered to sell the hereditaments thereby settled, or any of them, upon the request of the said A. B. during his life (*r*): AND WHEREAS

CONVEYANCE
OF FREEHOLDS
BY TENANT FOR
LIFE UNDER
POWERS OF
SETTLED LAND
ACT.

Recite inden-
ture of
settlement.

Agreement for
sale.

month before he makes the sale, exchange, or partition, or enters into a contract for the same, yet so that a person dealing in good faith with the tenant for life is not concerned to inquire whether the notice has been given. It is, however, provided, by the 5th section of the Settled Land Act, 1884, that the notice may be of a general intention in that behalf, and that any trustee may by writing under his hand waive notice either in any particular case or generally, and may accept less than one month's notice.

tenant for life
of intention
to sell.

As the powers given by the Act and any express power contained in a settlement are cumulative, a sale can be made, if desired, under the express power instead of under the powers of the Act, and in that case no notice need be given to the trustees or their solicitor under the 45th section of the Settled Land Act, 1882, but the sale must be made with the consent of the tenant for life, or where two or more persons constitute together the tenant for life, with the consent of one of such persons, whether the settlement requires such consent or not. (See sect. 56, sub-sect. 2, of the Act of 1882; and sect. 6, sub-sect. 2, of the Act of 1884.)

As to sales
under express
powers con-
tained in
settlement.

(*r*) The persons, if any, who are for the time being under a settlement trustees with power of sale of the settled land, or with power of consent to or approval of the exercise of such a power, or if under a settlement there are no such trustees, then the persons, if any, for the time being who are by the settlement declared to be trustees thereof for the purposes of the Act are by sect. 2, sub-sect. 8, declared to be for the purposes of the Act trustees of the settlement. The "trustees with power of sale" mentioned in this section, means trustees with a present power of sale, so that trustees of an existing settlement which contains a power that could not be exercised by them at the time of the sale by the tenant for life could not be trustees for the purposes of the Act within the meaning of that section. (*Wheelwright v. Walker*, 23 Ch. D. 760.) Trustees with a power of sale subject to the consent of another, are trustees for the purposes of the Act. (*Constable v. Constable*, 33 Ch. D. 233.)

Definition of
persons who
are trustees
for purposes
of Act.

The 38th section empowers the Court where there are no trustees of the settlement within the definition in the Act, or where in any other case it may be expedient that new trustees should be appointed for the purposes of the Act, or on the application of the tenant for life, or any other person having an interest in the settled land, or in the case of an infant of his guardian or next friend, to appoint trustees, and declares that the persons so appointed, and the survivors and survivor of them, shall be the trustees or trustee of the settlement for the purposes of the Act. The Court will sometimes appoint the trustees of the existing settlement trustees for the purposes of the Act, but not under any circumstances the

Court em-
powered to
appoint new
trustees for
purposes of
Act.

CONVEYANCE
OF FREEHOLDS
BY TENANT FOR
LIFE UNDER
POWERS OF
SETTLED LAND
ACT.

Considera-
tion.

Tenant for life
conveys free-
holds to
purchaser.

the said A. B. has agreed to sell to the said X. Y. the fee simple of the hereditaments hereinafter described at the price of £——(s): NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said C. D. and E. F. as such trustees as aforesaid paid by the said X. Y. on or before the execution of these presents, by the direction of the said A. B. (*the receipt, &c.*), the said A. B., in exercise of the power for this purpose vested in him by the Settled Land Act, 1882, and of all other powers (if any) him hereunto enabling, and as beneficial owner, hereby conveys unto the said X. Y. ALL, &c. (*parcels*), To HOLD the same unto and to the use of the said X. Y. in fee simple: AND THE SAID A. B. hereby acknowledges the right of the said X. Y. to production of the said indenture of settlement, and to delivery of copies thereof, and hereby undertakes for the safe custody thereof. (*Proviso as to covenants for title when the tenant for life is not the settlor, suprd, p. 301.*)

IN WITNESS, &c.

tenant for life (*In re Harrop's Trusts*, 24 Ch. D. 717), or his solicitor (*In re Kemp's Settled Estates*, 24 Ch. D. 485), or two near relatives of the tenant for life. (*In re Knowles' Settled Estates*, 27 Ch. D. 707.)

(s) It is assumed in the above Precedent that the tenant for life has sent the notice required by sect. 45 of the Settled Land Act, 1882; but as the purchaser is exempted from the duty of inquiring respecting the notice, it is not necessary to mention it in the conveyance. If the notice has not in fact been given, and the purchaser completes without notice of the omission, he will have a good title, but the tenant for life will have committed a breach of duty, rendering him liable to damages on the suit of a remainderman.

For further observations on the Settled Land Acts, see the Dissertation on Settlements in Vol. II.

No. LXV.

CONVEYANCE of COPYHOLDS by the TENANT for LIFE
under the POWERS of the SETTLED LAND ACT, 1882,
where the PURCHASE-MONEY is paid into COURT (t).

CONVEYANCE
OF COPYHOLDS
BY TENANT FOR
LIFE UNDER
POWERS OF
SETTLED LAND
ACT.

THIS INDENTURE, made the — day of —, BETWEEN
A. B., of, &c. (*tenant for life*), of the one part, and X. Y., of,
&c. (*purchaser*), of the other part: WHEREAS, G. H., late of,
&c., deceased, made his will dated the — day of —,
and thereby devised all his manors, messuages, lands, tene-
ments, and hereditaments situate in the parishes of — and
—, in the county of —, being freehold of inheritance, unto
L. M., N. O., and P. Q., in fee simple, To the use, &c. (*that
testator's wife should receive a jointure*), and subject thereto,
To the use of his eldest son, the said A. B., during his life,
without impeachment of waste, with divers remainders over;
And the said testator thereby devised all his messuages,
lands, tenements, hereditaments, and premises in the parishes
aforesaid, being copyhold, unto the said L. M., N. O., and
P. Q., in trust out of the rents and profits of the said copy-
hold premises to pay and render the customary rents and
services, and subject thereto upon such trusts and with and
subject to such powers and provisions as would correspond as
nearly as the difference of tenure would permit with the uses,
trusts, powers, and provisions thereinbefore declared and con-
tained concerning the said freehold hereditaments situate in the
parishes aforesaid, but so as not to increase or multiply charges
or powers of charging: (*Death of testator in 1880, and probate of
his will.*) AND WHEREAS the hereditaments intended to be
hereby conveyed are part of the copyhold hereditaments situate
in the said parish of —, to which the said testator was entitled
at the time of his decease as aforesaid, and the said L. M., N. O.,

Parties.

Recite will
devising
other heredita-
ments, being
freehold of
inheritance.

To use of
testator's
eldest son for
life.

Devise of
copyholds
upon trusts
corresponding
with freeholds.

That heredita-
ments to be
conveyed form
part of settled
copyholds.

(t) The 20th section of the Settled Land Act, 1882, enables the tenant for life to convey the settled copyholds by deed, but provides that such deed shall be entered on the Court Rolls, and that on payment of the customary fines the title of the purchaser shall be perfected by admittance. It follows that the formality of a surrender to the use of the purchaser by the trustees will not be necessary.

Tenant for life
enabled to sell
settled copy-
holds by deed.

CONVEYANCE
OF COPYHOLDS
BY TENANT FOR
LIFE UNDER
POWERS OF
SETTLED LAND
ACT.

That will did
not confer on
trustees power
of sale.

Agreement for
sale by tenant
for life.

Order for
payment of
purchase-
money into
Court.

Payment of
purchase-
money into
Court pur-
suant to order.
Tenant for life
conveys copy-
holds to pur-
chaser in
customary
fee simple.

and P. Q., as the trustees of the said will, were admitted tenants thereof on the — day of —, 18—: AND WHEREAS the said will did not confer on the trustees thereof any power of sale over the freehold or copyhold hereditaments thereby devised: AND WHEREAS by an order of the High Court of Justice (Chancery Division), made on the application of the said A. B., and dated the — day of —, G. H., of, &c., and I. J., of, &c., were appointed trustees of the said will for the purposes of the Settled Land Act, 1882: AND WHEREAS the said A. B. has agreed to sell to the said X. Y. the said copyhold hereditaments at the price of £—: AND WHEREAS by an order of the said Court dated the — day of —, and made on the application of the said X. Y., it was ordered that the said X. Y. should be at liberty to pay into Court to the credit of "In the matter of the will of G. H., dated the — day of —, the proceeds of the sale of the — estate, and in the matter of the Settled Land Act, 1882," the sum of £—, on account of the purchase-money of the said — estate, settled by the said will: AND WHEREAS pursuant to the said order the said X. Y. has paid the said sum of £— into Court to the account aforesaid (*u*) as appears by the receipt of one of the cashiers of the Bank of England: NOW THIS INDENTURE WITNESSETH, that in pursuance of the aforesaid agreement, and in consideration of the sum of £— paid by the said X. Y. as aforesaid, the said A. B., in exercise of the power for this purpose vested in him by the Settled Land Act, 1882, and of all other powers (if any) him hereunto enabling, and as beneficial owner hereby conveys unto the said X. Y., ALL, &c. (*copyhold parcels*), To HOLD the same unto the said X. Y. in customary fee simple at the will of the lord of the manor of —, of which the same hereditaments are held according to the custom of the said manor, by and under the rents, suits, and services therefor due and of right accustomed. (*Proviso qualifying statutory covenants for title, supra, p. 301.*)

IN WITNESS, &c.

(*u*) See the Supreme Court Funds Rules, 1884.

No. LXVI.

ASSIGNMENT OF LEASEHOLDS *by the* TENANT FOR
LIFE *under the Powers of the* SETTLED LAND ACT,
1882.

ASSIGNMENT OF
LEASEHOLDS BY
TENANT FOR
LIFE UNDER
SETTLED LAND
ACT.

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c. (*tenant for life*), of the first part, C. D. of, &c., and E. F. of, &c. (*trustees*), of the second part, and X. Y. of, &c. (*purchaser*), of the third part (*Recite lease to A. B.*): AND WHEREAS by an indenture dated the — day of —, and made, &c., being a settlement made in contemplation of the marriage then intended and shortly afterwards solemnized between the said A. B. and G. H., spinster, now G. his wife, certain freehold hereditaments therein described were conveyed by the said A. B. to the use of the said A. B. during his life, with remainders over, AND by the said indenture the said C. D. and E. F., were empowered to sell the said hereditaments, or any part thereof, upon the request of the said A. B. during his life, AND by the same indenture the leasehold hereditaments therein mentioned including those comprised in the hereinbefore recited indenture of lease, were assigned by the said A. B. unto the said C. D. and E. F. for all the residue then unexpired of the several terms of years created therein by the several leases under which the same were respectively held subject to the rents reserved by the same leases respectively, and to the covenants and conditions therein respectively contained, and on the lessee's part to be observed and performed, nevertheless in trust with and out of the rents and profits of the said premises to pay the said rents and observe and perform the said covenants and conditions, and subject thereto upon such trusts and with and subject to such powers and provisions as would correspond as nearly as the difference of tenure would permit with the uses, trusts, powers, and provisions thereinbefore declared and contained concerning the said freehold hereditaments: AND WHEREAS the said A. B. has agreed to sell to the said X. Y. the premises comprised in the hereinbefore recited indenture of lease for the residue of the said term, subject to the said rent

Parties.

Recite settlement whereby freehold hereditaments were conveyed to the use of A. B. for life with remainders over, and whereby leasehold hereditaments were assigned to trustees for the residue of the terms therein upon trusts corresponding with the uses declared concerning the freeholds.

Agreement by tenant for life to sell the leaseholds.

ASSIGNMENT OF
LEASEHOLDS BY
TENANT FOR
LIFE UNDER
SETTLED LAND
ACT.

Consideration.

A. B. in exercise of power conferred by Settled Land Act, assigns, leaseholds;

to purchaser for residue of term of — years, subject to payment of rent and observance of lessee's covenants.

A. B. acknowledges right of purchaser to production of settlement, and undertakes for safe custody.

and lessee's covenants, at the price of £—: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £— to the said C. D. and E. F. as such trustees as aforesaid paid by the said X. Y. on or before the execution of these presents by the direction of the said A. B. (*the receipt, &c.*), the said A. B. in exercise of the power for this purpose vested in him by the Settled Land Act, 1882, and of all other powers (if any) him hereunto enabling, and as beneficial owner, hereby assigns unto the said X. Y. ALL those pieces or parcels of land, hereditaments, and premises comprised in and demised by the said indenture of lease of the — day of —, 18—, To HOLD the same unto the said X. Y. for all the residue now unexpired of the said term of — years granted therein by the said indenture of lease, subject to the rent thereby reserved, and to the covenants and conditions therein contained, and which henceforth on the lessee's part ought to be observed and performed: AND THE SAID A. B. hereby acknowledges the right of the said X. Y. to production of the said indenture of settlement and to delivery of copies thereof, and hereby undertakes for the safe custody thereof. (*Covenants by X. Y. with A. B. (x) to pay the rent and observe the lessee's covenants, suprd, p. 238.*)

IN WITNESS, &c.

No. LXVII.

CONVEYANCE
UNDER
SETTLED LAND
ACT ON BEHALF
OF INFANT
TENANT IN FEE
SIMPLE.

Parties.

CONVEYANCE under the SETTLED LAND ACT, 1882 (*y*),
by a PERSON appointed to exercise POWERS on BEHALF
of an INFANT TENANT in FEE SIMPLE in POSSESSION.

THIS INDENTURE, made the — day of —, BETWEEN
A. B. of, &c., and C. D. of, &c. (*guardians and persons appointed*)

Where tenant
in possession
is an infant.

(*x*) This covenant is entered into with A. B. not because he is beneficial tenant for life, but because he was the original lessee.

(*y*) By the 59th and 60th sections it is declared, that an infant entitled in possession to land shall be deemed tenant for life thereof, and that the powers of a tenant for life may be exercised on his behalf by the trustees

to exercise powers), of the one part, and E. F. of, &c. (*purchaser*), of the other part. WHEREAS G. H., late of, &c., died on the —, day of —, 18—, intestate, seised in fee simple of the hereditaments hereinafter described, and leaving I. K., his eldest son and heir-at-law, which said I. K. is an infant of the age of — years or thereabouts: AND WHEREAS (*Recite appointment by Court of A. B. and C. D. to be guardians of infant*): AND WHEREAS the said A. B., on behalf of the said I. K., lately entered into a provisional contract for the sale to the said E. F. of the hereditaments hereinafter described, and the fee simple thereof for the sum of £—: AND WHEREAS by an order of the High Court of Justice (Chancery Division) made on the — day of —, 18—, in the matter, of, &c., on the application of the said A. B. and C. D., the guardians of the said I. K., it was ordered that the said A. B. and C. D. should be at liberty to exercise during the minority of the said I. K. and on his behalf the power conferred upon a tenant for life by the Settled Land Act, 1882, in relation to the sale of land, and to sell the said hereditaments to the said E. F. for the sum of £—: AND, &c. (*order authorizing the purchaser to pay the purchase-money into court, and the payment into court, supra*, p. 306, *mutatis mutandis*): NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £— paid by the said E. F. into court as aforesaid, the said A. B. and C. D. on behalf of the said I. K., hereby convey unto the said E. F. ALL, &c. (*parcels*), To HOLD the same unto and to the use of the said E. F. in fee simple: AND WHEREAS the documents mentioned in the schedule hereto relate to the hereditaments hereby conveyed, and also to other hereditaments of greater value, and the same are in the possession of the said A. B. and C. D., as the guardians of the said I. K., Now the said A. B. and C. D.

of the settlement, and if there are none, by such person as the Court on the application of a testamentary or other guardian or next friend may order.

The practice of the Court under sect. 60 is to limit the order, in the first instance, to the particular sale in question, and then to authorize an exercise of the power generally, but every or any such exercise to be subject to the sanction of the Court. It is not necessary to appoint trustees of the settlement to whom notice is to be given under sect. 45, but the purchase-money must be paid into Court. (*In re Countess of Dudley's Contract*, 35 C. D. 338.)

CONVEYANCE
UNDER
SETTLED LAND
ACT ON BEHALF
OF INFANT
TENANT IN FEE
SIMPLE.

Recite that
G. H. died
intestate,
leaving I. K.
his heir-at-
law and an
infant.

Appointment
by the Court
of A. B. and
C. D. as
guardians of
infant, and
order that the
powers con-
ferred by
Settled Land
Act may be
exercised by
A. B. on be-
half of I. K.
during his
minority.

Order of Court
authorizing
purchase-
money to be
paid into
Court.
Consideration
paid into
Court.

A. B. on be-
half of I. K.
conveys lands
to grantee in
fee simple.

Guardians
acknowledge
right of
E. F. to pro-
duction of
documents
mentioned in
schedules
hereto, and
give qualified
undertaking
for safe cus-
tody thereof.

Practice of the
Court under
sect. 60.

CONVEYANCE
UNDER
SETTLED LAND
ACT ON BEHALF
OF INFANT
TENANT IN FEE
SIMPLE.

hereby acknowledge the right of the said E. F. to production of the said documents, and to delivery of copies thereof.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. LXVIII.

CONVEYANCE
BY TRUSTEE OF
BANKRUPT.

CONVEYANCE of FREEHOLDS by the TRUSTEE of a BANKRUPT (z).

Parties.

THIS INDENTURE, made the — day of —, BETWEEN
A. B. of, &c. (*creditors' trustee of the estate and effects of G. H.*

Provisions of
Bankruptcy
Act, 1883, as
to appoint-
ment of a
trustee or com-
mittee of
inspection.

(z) The Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), has been repealed as from the 1st of January, 1884, by the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), which from that date regulates the law of Bankruptcy, and which, by the 21st and 22nd sections, provides that where a debtor is adjudged bankrupt, the creditors may by ordinary resolution appoint some fit person to fill the office of trustee of the property of the bankrupt, or may resolve to leave his appointment to the committee of inspection, and may at their first or any subsequent meeting appoint from the creditors a committee of inspection, consisting of not more than five nor less than three persons to superintend the administration of the bankrupt's property by the trustee.

Property
divisible
amongst
creditors of
bankrupt.

The 44th section declares that the property of the bankrupt divisible amongst the creditors shall comprise all such property as may belong to or be vested in the bankrupt at the commencement of the bankruptcy, or may be acquired by or devolve on him before his discharge; and the capacity to exercise and take proceedings for exercising such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the commencement of the bankruptcy or before his discharge, except the right of nomination to a vacant ecclesiastical benefice; and all goods being at the commencement of the bankruptcy in the possession, order, or disposition of the bankrupt in his trade or business by the consent and permission of the true owner under such circumstances that he is the reputed owner, provided that things in action, other than debts due or growing due to the bankrupt in the course of his trade or business, shall not be deemed goods within the meaning of this section. A trustee in bankruptcy cannot exercise any general power of the bankrupt by deed or will after his death. (*Nichols v. Nixey*, 29 Ch. D. 1005.)

Effect of
testamentary
power.

A testamentary power would not, it is apprehended, be a power exercisable for the benefit of the bankrupt within the last-mentioned section. If, however, he exercises the power by his will and dies during the bank-

of, &c., under an adjudication in the Court of Bankruptcy), of the one part, and C. D. of, &c. (purchaser), of the other part: WHEREAS by an order of the High Court of Justice (Queen's Bench Division) (a) (or, as the case may be, the County Court of —), dated the — day of —, the said G. H. was

CONVEYANCE
BY TRUSTEE OF
BANKRUPT.

Order for ad-
judication.

ruptey, the property affected thereby, to the extent to which the power is exercised, will be assets for the benefit of his creditors thereunder. (Sug. Pow. 188, 8th ed.; *Jenney v. Andrews*, 6 Madd. 264.)

Until a trustee is appointed, the official receiver is the trustee for the purposes of the Act, and may, therefore, sell. (*In re Parker*, 14 Q. B. D. 407; 15 Q. B. D. 196.) On the appointment of a trustee, the property forthwith vests in him. (Sect. 54.)

The creditors may, if they think fit, appoint more persons than one to the office of trustee (sect. 84), and any vacancy in the office of trustee may be filled up by the creditors in general meeting, and during any vacancy the official receiver is empowered to act as trustee. (Sect. 87.)

The 56th section empowers the trustee to sell the property of the bankrupt by public auction or private contract, to exercise any powers the capacity to exercise which is vested in the trustee under the Act, and execute any powers of attorney, deeds, and other instruments for the purpose of carrying into effect its provisions; and to deal with any property to which the bankrupt is beneficially entitled as tenant in tail in the same manner as the bankrupt might have dealt with the same; and declares that sects. 56 to 73 (both inclusive) of the Fines and Recoveries Act (3 & 4 Wm. IV. c. 74), shall extend to proceedings in bankruptcy under the Act.

As to copyhold or customary property, or any like property passing by surrender or admittance, the 50th section empowers the trustee to deal with the same as if it had been capable of being and had been duly surrendered or otherwise conveyed to such uses as the trustee may appoint, and any appointee of the trustee is to be admitted accordingly.

The 50th section also provides that when any part of the property of the bankrupt consists of property transferable in the books of any company, office, or person, the trustee may exercise the right to transfer it to the same extent as the bankrupt might have exercised it if he had not become bankrupt; and that where any such property consists of things in action such things shall be deemed to have been duly assigned to the trustee.

Subject to the provisions of the 47th and 48th sections as to the avoidance of voluntary settlements and preferences in certain cases, any payment by a bankrupt to any of his creditors, and any payment or delivery to him, any conveyance or assignment by him for a valuable consideration, and any contract, dealing, or transaction by or with him for valuable consideration, are declared to be valid, provided the payment, &c. take place before the date of the receiving order, and the person (other than the debtor) to, by, or with whom the payment, &c. were made, executed, or entered into has not at the time of such payment, &c. notice of any available act of bankruptcy committed by the bankrupt before that time. (Sect. 49.)

For the section of the Act which relates to the disclaimer of leases, and observations thereon, see the Dissertation on Leases in Vol II. pp. 28, 29.

(a) The jurisdiction of the London Court of Bankruptcy has been transferred to the High Court of Justice, and bankruptcy business is, under the General Orders dated 1st January, 1884, assigned to the Queen's Bench Division until further order.

Until appointment of trustee official receiver is to act as trustee.

How vacancies in the office of trustee are to be filled up.

Trustees may sell property by public auction or private contract, and deal with estate in tail of bankrupt as bankrupt might have dealt with the same.

As to copyhold or customary property.

As to property which passes by transfer in the books of a company and choses in action.

Conveyances and contracts for value, before the date of receiving order, are valid where purchaser has had no notice of act of bankruptcy.

CONVEYANCE
BY TRUSTEE OF
BANKRUPT.

Sale by
auction.

Payment of
deposit by
purchaser.

Consideration.

Trustee con-
veys parcels.

adjudged a bankrupt, and the said A. B. was, on or about the — day of —, duly chosen trustee of the estate and effects of the said bankrupt: AND WHEREAS the hereditaments hereinafter described were put up for sale by public auction by the said A. B. on the — day of —, according to certain printed particulars: AND WHEREAS the said C. D. bid at the said auction the sum of £— for the said hereditaments, and was declared the purchaser thereof at that price, and thereupon the said C. D. paid to the said A. B. the sum of £— by way of deposit in part payment of the said purchase-money: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £— paid by way of deposit as aforesaid, and also in consideration of the sum of £—, now paid by the said C. D. to the said A. B. (the receipt of which several sums of £— and £— making together the said purchase-money of £—, the said A. B. hereby acknowledges), the said A. B. as trustee hereby conveys unto the said C. D. ALL, &c. (*parcels*): To HOLD the same unto and to the use of the said C. D., in fee simple.

IN WITNESS, &c.

No. LXIX.

CONVEYANCE
BY TRUSTEE OF
BANKRUPT
WITH CON-
CURRENCE OF
MORTGAGEE.

Parties.

CONVEYANCE of FREEHOLDS by the TRUSTEE of a BANKRUPT with the Concurrence of the MORTGAGEE, in which the BANKRUPT JOINS (b).

THIS INDENTURE, made the — day of —, BETWEEN O. P. of, &c. (*mortgagee*), of the first part, A. B. of, &c. (*trustee*), of the second part, E. F. of, &c. (*bankrupt*), of the third part, and G. H. of, &c. (*purchaser*), of the fourth part (*Recite mortgage from E. F. to O. P. for £—, and that principal sum is still due with interest from a certain date amounting to £—, supra, p. 256,—order of adjudication, and*

(b) The bankrupt cannot be compelled to join.

appointment of A. B. to be trustee, supra, pp. 311, 312): AND WHEREAS the said A. B., as such trustee as aforesaid, hath agreed to sell to the said G. H., &c. (*Agreement for sale,—Agreement that mortgagee shall be paid his debt out of purchase-money, supra*, p. 256): AND WHEREAS the said E. F. hath consented to join in these presents in manner hereinafter mentioned: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £——, to the said O. P. paid by the said G. H., on or before the execution of these presents, by the direction of the said A. B. (the receipt whereof the said O. P. hereby acknowledges), and in consideration of the sum of £—— to the said A. B. at the same time paid by the said G. H. (the payment and receipt of which said sums of £—— and £—— respectively, in manner aforesaid, making together the said purchase-money of £——, the said A. B. hereby acknowledges) the said O. P. as mortgagee, by the direction of the said A. B. and E. F., hereby conveys and releases, and the said A. B., as trustee, hereby conveys, and the said E. F., as beneficial owner, hereby confirms unto the said G. H., ALL, &c. (*parcels*): To HOLD the same unto and to the use of the said G. H., in fee simple, absolutely discharged from the said mortgage debt of £——, and all interest for the same, and all claims and demands on account thereof.

IN WITNESS, &c.

CONVEYANCE
BY TRUSTEE OF
BANKRUPT
WITH CON-
CURRENCE OF
MORTGAGEE.

Agreement for
sale.

Witnessing
part.
Consideration.

Mortgagee,
trustee, and
bankrupt
convey.

Parcels.
To purchaser
in fee.

No. LXX.

APPOINTMENT of COPYHOLDS by the TRUSTEE of a BANKRUPT.

APPOINTMENT
OF COPYHOLDS
BY TRUSTEE OF
BANKRUPT.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*trustee of the estate and effects of G. H. of, &c., a bankrupt*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: WHEREAS the said G. H. was at the date of his bankruptcy hereinafter mentioned seised of or entitled to the copyhold hereditaments hereinafter described in customary

Parties.

Recital of
seisin by
bankrupt of
copyholds.

**APPOINTMENT
OF COPYHOLDS
BY TRUSTEE OF
BANKRUPT.**

Bankruptcy
and appoint-
ment of
trustee.

Agreement for
sale.

Witnessing
part.

Trustee
appoints
copyholds to
purchaser in
fee.

fee simple according to the custom of the manor of —, at and under the rents, suits, and services therefor due and of right accustomed: AND WHEREAS, &c. (*Recite order of adjudication and appointment of A. B. to be trustee, supra*, pp. 311, 312): AND WHEREAS the said A. B., as such trustee as aforesaid, has agreed to sell the said copyhold hereditaments to the said C. D. at the price of £—: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (the receipt whereof the said A. B. hereby acknowledges), the said A. B., as trustee, in exercise of the power for this purpose vested in him under the Bankruptcy Act, 1883, and of all other powers (if any) him hereunto enabling, hereby appoints that ALL THAT, &c. (*parcels as described in the Court Rolls*), to all which hereditaments hereinbefore described the said G. H. was admitted tenant at a court holden in and for the said manor on the — day of —, shall henceforth go, remain, and be To THE USE of the said C. D., in customary fee simple at the will of the lord, according to the custom of the said manor, by and under the rents, suits, and services therefor due and of right accustomed.

IN WITNESS, &c.

No. LXXI.

**ASSIGNMENT OF
LEASEHOLDS
BY TRUSTEE OF
A BANKRUPT.**

**ASSIGNMENT of LEASEHOLDS by the TRUSTEE of
a BANKRUPT.**

Parties.

Recite lease
to bankrupt.

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c. (*trustee of the estate and effects of O. P. of, &c., a bankrupt*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: WHEREAS by an indenture of lease dated the — day of —, and made between G. H. of the one part, and the said O. P. of the other part, all that messuage or tenement, &c. (*parcels as described in the lease*), were demised by the said G. H. unto the said O. P., his executors, administrators, and assigns, from the — day of — then last past, for the term of — years, at the yearly rent of £—, and subject to the covenants

and conditions in the said indenture of lease contained, and on the part of the lessee, his executors, administrators, and assigns, to be observed and performed (*Recite order of adjudication against O. P., and appointment of trustees, supra*, pp. 311, 312):

ASSIGNMENT OF
LEASEHOLDS
BY TRUSTEE OF
A BANKRUPT.

AND WHEREAS the said A. B. as such trustee as aforesaid hath agreed to sell to the said C. D. the premises comprised in the said indenture of lease for the residue of the said term of — years subject to the said rent, covenants, and conditions at the price of £—: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (the receipt whereof the said A. B. hereby acknowledges), the said A. B. as trustee hereby assigns unto the said C. D., THE messuage and premises demised by the said indenture of lease, TO HOLD the same unto the said C. D., for all the residue now unexpired of the said term of — years, subject to the rent reserved by the said indenture of lease, and the covenants and conditions in the same indenture contained, and which henceforth on the part of the lessee ought to be observed and performed (c).

Agreement by
trustee of
bankrupt for
sale.

Trustee
assigns lease-
holds, for
residue of
term to pur-
chaser.

IN WITNESS, &c.

No. LXXII.

CONVEYANCE by the TRUSTEE of a BANKRUPT of a
FREEHOLD ESTATE to which he was ENTITLED for an
ESTATE TAIL in POSSESSION.

CONVEYANCE
OF ESTATE TAIL
IN POSSESSION
BY TRUSTEE
OF BANKRUPT.

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c. (*trustee*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: WHEREAS by an indenture dated the — day of —, and made between (*parties*), the heredita-

Parties.

Recite creation
of estate tail.

(c) On the sale of leaseholds by the trustee of a bankrupt, the purchaser cannot be required to enter into a covenant to indemnify him or the bankrupt against the payment of the rent, and the observance of the covenants contained in the lease, such a covenant being unnecessary, as the liability ceases on the assignment. Moreover, it would be a breach of trust on the part of the trustee to stipulate for such a covenant. (*Wilkins v. Fry*, 1 Mer. 265.)

On sale of
leaseholds by
trustee of
bankrupt,
purchaser is
not obliged to
indemnify.

CONVEYANCE
OF ESTATE TAIL
IN POSSESSION
BY TRUSTEE OF
BANKRUPT.

Death of
tenant for life.

Trustee con-
veys the estate
to the pur-
chaser in fee.

Discharged
from estate
tail and
remainders
over.

ments hereinafter described were limited to the use of L. M. for his life, and after his decease to the use of N. O. and the heirs male of his body: AND WHEREAS the said L. M. died on the — day of —: AND WHEREAS (*Recite order of adjudication against N. O., and appointment of trustee,—Sale by auction and payment of deposit, suprd, pp. 311, 312*): NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement, and in consideration, &c., the said A. B., as trustee, doth by this deed, which is intended to be enrolled in the High Court of Justice (Chancery Division), pursuant to the statute in that behalf, convey unto the said C. D., ALL, &c. (*parcels*): To HOLD the same unto and to the use of the said C. D. in fee simple, absolutely discharged from the said estate tail of the said N. O. and all remainders, estates, and powers to take effect after the determination or in defeasance of such estate tail.

IN WITNESS, &c.

No. LXXIII.

CONVEYANCE
BY TRUSTEE IN
BANKRUPTCY
OF BASE FEE.

CONVEYANCE *by the TRUSTEE of a BANKRUPT of a*
FREEHOLD ESTATE *to which he was ENTITLED for an*
ESTATE TAIL *in REMAINDER.*

Parties.

Recite creation
of estate tail.

Agreement for
sale of a base
fee in the
estate.

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c. (*trustee*), of the one part, and C. D. of, &c. (*pur-chaser*), of the other part: WHEREAS by an indenture dated, &c., and made between (*parties*), the hereditaments hereinafter described were limited to the use of L. M. for his life, and after his decease to the use of N. O. and the heirs male of his body: AND WHEREAS (*Recite order of adjudication against N. O., and appointment of A. B. as trustee, suprd, pp. 311, 312*): AND WHEREAS the said A. B., as such trustee as aforesaid, hath agreed to sell to the said C. D. the benefit of a base fee in the said hereditaments, at the price of £—: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £— to the said A. B. paid by the said C. D. on or

before the execution of these presents (*the receipt, &c.*), the said A. B. as trustee doth by this deed which is intended to be enrolled in the High Court of Justice (Chancery Division) pursuant to the statute in that behalf, convey unto the said C. D. ALL, &c. (*parcels*): To HOLD the same unto and to the use of the said C. D., his heirs and assigns, subject to the life estate therein of the said L. M. absolutely discharged from the said estate tail of the said N. O., and to the intent that the same may be hereby converted into a base fee.

IN WITNESS, &c.

CONVEYANCE
BY TRUSTEE IN
BANKRUPTCY
OF BASE FEE.

Trustee con-
veys the estate
to the pur-
chaser.
Discharged
from the estate
tail, and to
the intent that
the same may
be converted
into a base fee.

No. LXXIV.

RELEASE of EQUITY OF REDEMPTION to the MORTGAGEE
by the TRUSTEE of a BANKRUPT in consideration of part
of the Mortgage Debt (*d*).

RELEASE OF
EQUITY OF
REDEMPTION
BY TRUSTEE IN
LIQUIDATION.

THIS INDENTURE, made the — day of —, BETWEEN Parties.
A. B. of, &c. (*trustee*), of the one part, and C. D. of, &c. (*mort-
gagee and purchaser*), of the other part (*Recite mortgage for
£5,000 by L. M. to C. D., and bankruptcy proceedings as in last
precedent*): AND WHEREAS the said C. D. proved in the said
bankruptcy for the sum of £5,810, being the amount owing
for principal, interest, and costs, and in his proof he valued his
said security at £4,000: AND WHEREAS the said A. B., as such
trustee as aforesaid, has elected not to redeem the said security,
nor to require it to be realized under the provisions in that
behalf contained in the second schedule to the Bankruptcy Act,
1883: And it has been agreed between him and the said C. D.
that the property comprised in the said security shall be con-
veyed to the said C. D., free from all right or equity of re-
demption therein, in consideration of the sum of £4,000, part

Recite mort-
gage and
bankruptcy
proceedings.
Proof by mort-
gagee of debt
and value of
his security,
that trustee
has declined
to redeem, and
agreement to
release equity
of redemption.

(*d*) See 46 & 47 Vict. c. 52, 2nd Sched. r. 12. It would seem that, under this rule, if the trustee does not within six months signify his election to exercise the power of redeeming, &c., the equity of redemption will, thereupon, without any conveyance, vest in the mortgagee.

RELEASE OF
EQUITY OF
REDEMPTION
BY TRUSTEE IN
LIQUIDATION.

Witnessing
part.

Trustee
releases equity
of redemption
to mortgagee.

of the said mortgage debt, and that the proof of the said C. D. in the said bankruptcy shall be reduced by that sum accordingly: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £4,000, part of the said mortgage debt, and from which sum of £4,000 the said C. D. hereby releases the estate and effects of the said L. M., the said A. B., as trustee, hereby releases and confirms unto the said C. D., ALL the hereditaments comprised in the said indenture of mortgage, or which have by any means become subject thereto: To HOLD the same unto and to the use of the said C. D. in fee simple, absolutely discharged from all right or equity of redemption therein.

IN WITNESS, &c.

No. LXXV.

CONVEYANCE
BY DEVISEES
UNDER TESTA-
MENTARY
CHARGE OF
DEBTS.

CONVEYANCE of FREEHOLDS by DEVISEES IN TRUST
*under a WILL in EXERCISE of the POWER of SALE
rested in them under a CHARGE of the TESTATOR'S REAL
ESTATE with payment of his DEBTS (c).*

Parties.

THIS INDENTURE, made the — day of —, BETWEEN
A. B. of, &c., and C. D. of, &c. (*vendors*), of the one part, and

Persons en-
titled to sell
under charge
of debts.

(c) If a testator charges his real estate or any part thereof with the payment of his debts, and then devises the same for his whole interest therein to trustees, the trustees can alone sell such property under the trust or power created by the charge of debts. But if a testator does not devise such real estate so as to vest his whole interest therein in trustees, the executors will be the persons to sell under the charge of debts, and their conveyance will pass the legal as well as the equitable estate. (See 22 & 23 Vict. c. 35, ss. 14—17.)

If, however, a testator charges his real estate, or any part thereof, with the payment of his debts, and then devises the same for his whole interest therein to a devisee for his own benefit, then, although the property may be also charged by the will with annuities and legacies, the devisee, if an executor also, can confer a good title upon a purchaser without the concurrence of the annuitants or legatees, for the trust or power created by the charge of debts must override and be paramount to every beneficial gift or charge. (*Eland v. Eland*, 4 My. & Cr. 420; *Forbes v. Peacock*, 1 Ph. 717; *Watters on the Trustee Acts*, p. 211; 22 & 23 Vict. c. 35, s. 18.) When the beneficial devisee and executor are different persons, it is still

E. F., of, &c. (*purchaser*), of the other part: WHEREAS X. Y., late of, &c., deceased, made his will, dated, &c., and thereby, after charging his real estate with the payment of his debts, he devised and bequeathed all his real and personal estate and effects unto and to the use of the said A. B. and C. D. their heirs, executors, administrators, and assigns, upon the trusts therein declared concerning the same, and appointed G. H. sole executor of his said will: AND WHEREAS the said testator died on the — day of — without having altered or revoked his said will, and such will was duly proved by the said G. H., on the — day of —, in the principal Probate Registry of the High Court of Justice: AND WHEREAS the hereditaments herein-after described form part of the real estate devised by the said recited will: AND WHEREAS, in exercise of the power of sale now vested in the said A. B. and C. D. by reason of the said X. Y. having by his said will charged his real estate with the payment of his debts as aforesaid, they the said A. B. and C. D. have agreed to sell to the said E. F. the hereditaments herein-after described at the price of £—: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £— to the said A. B. and C. D. paid by the said E. F. on or before the execution of these presents (the receipt whereof the said A. B. and C. D. hereby acknowledge), the said A. B. and C. D., as trustees, in exercise of the aforesaid power, hereby sell and convey unto the said E. F., ALL, &c. (*parcels*): To

CONVEYANCE
BY DEVISEES
UNDER TESTA-
MENTARY
CHARGE OF
DEBTS.

Recite will
whereby real
estate was
charged with
testator's
debts.

Death of
testator and
probate of his
will.

Agreement by
devisees in
trust to exer-
cise power of
sale.

Devisees sell
parcels to pur-
chaser in fee.

undecided whether the beneficial devisee can make a good title without the executor, but the better opinion seems to be that he can. (*Corser v. Cartwright*, L. R. 7 H. L. 731; *West of England and South District Bank v. Murch*, 23 Ch. D. 138.)

When a testator by his will charges his real estate with the payment of his debts, and the executors of the will renounce, an administrator with the will annexed has no power to sell under the above-mentioned Act. (*Re Clay & Tetley*, 16 Ch. D. 3.)

Administrator
cannot sell.

Where a will contains an express power or direction to sell real estate and to apply the proceeds in the payment of debts or legacies, or where a testator directs real and personal estate to be sold and converted into money, and the proceeds of both properties to be divided amongst certain persons as a mixed fund, and no person is named in the will in either case to exercise the power or to carry the direction into effect, the power to sell will vest in the executors, and their conveyance will carry the legal as well as the equitable estate. (*Forbes v. Peacock*, 11 M. & W. 630; *Tylden v. Hyde*, 2 Sim. & Stu. 238; *Sugden on Powers*, p. 118, 8th ed.) A testamentary direction to sell and divide the proceeds among certain persons, and nothing more, will not confer on the executors a power of sale if real estate is the only subject of direction.

When express
direction to
sell vests
power of sale
in executor.

CONVEYANCE
BY DEVISEES
UNDER TESTA-
MENTARY
CHARGE OF
DEBTS.

HOLD the same unto and to the use of the said E. F. in fee simple.

IN WITNESS, &c.

No. LXXVI.

CONVEYANCE
BY EXECUTORS
UNDER TESTA-
MENTARY
CHARGE OF
DEBTS.

CONVEYANCE of FREEHOLDS by EXECUTORS in EXERCISE of the POWER of SALE vested in them under a CHARGE of the TESTATOR'S REAL ESTATE with payment of his DEBTS.

Parties.

Recite will
charging real
estate with
payment of
debts.

Agreement by
executors to
exercise power
of sale.

Consideration.

Executors of
will sell
parcels to
purchaser.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c., and C. D. of, &c. (*vendors*), of the one part, and E. F., of, &c. (*purchaser*), of the other part: WHEREAS X. Y., late of, &c., made his will, dated, &c., and thereby after charging his real estate with the payment of his debts, he devised such real estate unto G. H. for his life, with remainder to the children of G. H. in manner therein mentioned, and appointed the said A. B. and C. D. executors of his said will (*Death of testator and probate of his will*): AND WHEREAS in exercise of the power of sale now vested in the said A. B. and C. D., as such executors as aforesaid, in virtue of the said X. Y. having by his said will charged his real estate with the payment of his debts, they the said A. B. and C. D., as such executors as aforesaid, have agreed to sell to the said E. F. the hereditaments hereinafter described (which hereditaments form part of the real estate devised by the said recited will), at the price of £—: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £— to the said A. B. and C. D., as the personal representatives of the said X. Y., deceased, paid by the said E. F. on or before the execution of these presents (the receipt whereof the said A. B. and C. D. hereby acknowledge), the said A. B. and C. D. as such personal representatives as aforesaid, in exercise of the aforesaid power, hereby sell and convey unto the said E. F., ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said E. F. in fee simple.

IN WITNESS, &c.

No. LXXVII.

CONVEYANCE *by a DEVISEE of FREEHOLDS which are*
CHARGED *by the WILL with DEBTS and LEGACIES (f).*

CONVEYANCE
BY DEVISEE OF
FREEHOLDS
CHARGED WITH
DEBTS AND
LEGACIES.

THIS INDENTURE, made the — day of —, 18—, BETWEEN A. B., of, &c. (*vendor*), of the first part, and C. D., of, &c. (*purchaser*), of the second part. WHEREAS G. H., late of, &c., made his will dated, &c., whereby after charging all his real estate with the payment of his debts and legacies, and after making several pecuniary bequests, he devised and bequeathed all his real and personal estate so charged as aforesaid unto the said A. B. in fee simple, and appointed him sole executor of his said will (*Death of testator and probate of his will*): AND WHEREAS the hereditaments hereinafter described form part of the real estate devised by the said will as aforesaid: AND WHEREAS the said A. B. has agreed to sell to the said C. D. the said hereditaments, at the price of £—. NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £— to the said A. B., paid by the said C. D. on or before the execution of these presents (*the receipt, &c.*), the said A. B., as beneficial owner (*g*), hereby conveys unto the said C. D. ALL, &c. (*parcels*): To HOLD the same unto and to the use of the said C. D. in fee simple (*h*).

Parties.
Will of G. H.
whereby after
charging his
real estate
with his debts,
he devised and
bequeathed all
his real and
personal estate
to vendor.

Hereditaments herein-
after described
form part of
such real
estates.

Agreement for
sale.

Vendor con-
veys parcels to
purchaser in
fee.

IN WITNESS, &c.

(f) See on this subject note (e), *supra*, p. 318, and the remarks on "the effect of a charge of debts," in the Dissertation on Wills, in Vol. II.

(g) As the vendor is entitled to the surplus purchase-money after paying debts and legacies, he ought to be liable to the statutory covenants for title, and for this purpose to convey as beneficial owner.

(h) See *Corser v. Cartwright*, L. R. 7 H. L. 731; *West of England Bank v. March*, 23 Ch. D. 138.

LXXVIII.

CONVEYANCE
OF FREEHOLDS
BY THE
LIQUIDATORS
OF A
JOINT STOCK
COMPANY,
LIMITED.

CONVEYANCE of FREEHOLDS belonging to a JOINT-STOCK
COMPANY, LIMITED, on a sale by the LIQUIDATORS.

Parties.
Recite con-
veyance to
company.

Extraordinary
meetings of
company.

Resolution
that company
should be
wound up.

Appointment
of liquidators.

Agreement for
sale.

Considera-
tion.

The company
conveys
parcels
to purchaser
in fee.

THIS INDENTURE, made the — day of —, BETWEEN the — Company, Limited, in liquidation, and A. B., of, &c., and C. D., of, &c., liquidators of the said company (*vendors*), of the one part, and E. F., of, &c. (*purchaser*), of the other part: WHEREAS by an indenture dated, &c., and made between — of the one part and the said company of the other part, the hereditaments hereinafter described were conveyed unto and to the use of the said company: AND WHEREAS at an extraordinary meeting of the shareholders of the said company, duly convened and held at the — Hotel, in the City of London, on the — day of —, and at a subsequent extraordinary meeting of shareholders also duly convened and held at the said Hotel on the — day of —, the following special resolution was duly passed and confirmed, namely, that the said company be wound up voluntarily under the provisions of the Companies Acts, 1862 and 1867, and that the said A. B. and C. D. be appointed liquidators for the purpose of winding-up the said company: AND WHEREAS notice of the said special resolution was duly inserted in the London Gazette on the — day of —: AND WHEREAS the said liquidators, for and on behalf of the said company, have agreed to sell to the said G. H. the hereditaments hereinafter described at the price of £—: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £— to the said company paid by the said G. H., as appears by the receipt endorsed on these presents, the said company, as beneficial owners, hereby convey unto the said G. H. ALL, &c. (*parcels*): To HOLD the same unto and to the use of the said G. H., in fee simple.

IN WITNESS whereof the said company have caused their common seal to be attached to these presents, and the other parties hereto have hereunto set their hands and seals, the day and year first above written (*i*).

Receipt for
money in-
dorsed and
signed by
liquidators.

(*i*) The receipt for the purchase-money to be indorsed on the conveyance should be in the following form, and should be signed by the liquidators, or two of them:—"Received for and on behalf of the — Company, Limited, the sum of £—, being the consideration money within expressed to be paid to the said company."

No. LXXIX.

CONVEYANCE *by the ADMINISTRATOR of a CONVICT of a*
 FREEHOLD ESTATE, *to which he was ENTITLED at the*
 DATE of his CONVICTION (k).

CONVEYANCE
 BY ADMINIS-
 TRATOR
 OF CONVICT'S
 PROPERTY.

THIS INDENTURE, made the — day of —, BETWEEN Parties.
 A. B., of, &c. (*administrator*), of the one part, and C. D., of, &c.
 (*purchaser*), of the other part: WHEREAS G. H. was convicted Recite con-
 of felony at the assizes held at — in the month of — last, viction and
 and judgment of penal servitude was duly recorded against him judgment of
 by the Court of —: AND WHEREAS by a writing under the penal servi-
 hand of — Her Majesty's principal Secretary of State for tude.
 the Home Department, being the person authorised in that Appointment
 behalf by Her Majesty, dated the — day of —, pursuant of adminis-
 to the provisions for this purpose contained in an Act of trator.
 Parliament passed in the 33rd and 34th years of Her present
 Majesty, intituled "An Act to abolish forfeitures for treason
 and felony, and otherwise amend the law relating thereto,"
 the custody and management of the property of the said convict
 was committed to the said A. B. as the administrator thereof:
 AND WHEREAS the said A. B. as such administrator as afore- Agreement for
 said, pursuant to the power for this purpose vested in him by sale.
 the said Act, hath agreed to sell to the said C. D. the freehold
 hereditaments hereinafter described (which hereditaments form
 part of the property to which the said G. H. was entitled at
 the date of his conviction as aforesaid), at the price of £— :
 NOW THIS INDENTURE WITNESSETH, that in con-
 sideration of the sum of £— to the said A. B. as such
 administrator as aforesaid paid by the said C. D. on or before
 the execution of these presents (*the receipt, &c.*), the said A. B.
 as such administrator as aforesaid, and who for the purpose of
 the statutory covenant against incumbrances shall be deemed to
 convey as a trustee, hereby conveys unto the said C. D. ALL,
 &c. (*parcels, &c.*): To HOLD the same unto and to the use of Administrator
 the said C. D., in fee simple. conveys a free-
 hold estate,
 part of the
 convict's
 property,
 to purchaser
 in fee.

IN WITNESS, &c.

(k) See *supra*, pp. 104, 105.

No. LXXX.

CONVEYANCE
OF LIFE ESTATE
IN FREEHOLDS.

CONVEYANCE of a LIFE Estate in FREEHOLDS.

Parties.

Recite will
under which
vendor is
seised for his
life.

Agreement for
sale of life
estate.

Witnessing
part.
Considera-
tion.

Vendor con-
veys life
estate
to purchaser
in fee.

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: WHEREAS under or by virtue of the will of X. Y., late of —, deceased, dated, &c., the said A. B. is seised of the hereditaments hereinafter described, for an estate during his life without impeachment of waste: AND WHEREAS the said A. B. hath agreed to sell his life estate in the said hereditaments to the said C. D. at the price of £—: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £— to the said A. B. paid by the said C. D. on or before the execution of these presents (*the receipt, &c.*), the said A. B., as beneficial owner, hereby conveys unto the said C. D. ALL, &c. (*parcels*): To HOLD the same unto and to the use of the said C. D., for all the remainder of the life of the said A. B.

IN WITNESS, &c.

No. LXXXI.

CONVEYANCE
BY TENANT FOR
LIFE AND
REMAINDER-
MAN.

CONVEYANCE by TENANT for LIFE and REMAINDERMAN.

Parties.

Recite title of
vendors.

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c. (*tenant for life*), of the first part, C. D. of, &c. (*remainderman*), of the second part, and E. F. of, &c. (*purchaser*), of the third part: WHEREAS under or by virtue of the will of X. Y., late of, &c., deceased, dated, &c., and an indenture dated, &c., and made, &c., and duly enrolled in the High Court of Justice (Chancery Division) as a disentailing assurance, the said A. B. is seised of the hereditaments hereinafter described for an estate during his life without impeachment of waste, and the said C. D. is seised of the same hereditaments in fee simple

in remainder expectant on the said life estate of the said A. B. :
 AND WHEREAS the said A. B. and C. D. have agreed to sell the
 said hereditaments to the said E. F., subject to the succession
 duty (if any) to become payable on the death of the said
 A. B. (l), at the price of £——: NOW THIS INDENTURE
 WITNESSETH, that in consideration of the sum of £—— to
 the said A. B. and C. D. paid by the said E. F. on or before
 the execution of these presents (*the receipt, &c.*), the said A. B.,
 as beneficial owner, as to his estate for life in the hereditaments
 hereinafter described, and the said C. D., as beneficial owner, as
 to his estate in fee simple in remainder expectant on the said
 life estate of the said A. B. in the said hereditaments, hereby
 respectively convey unto the said E. F. (*parcels*): To HOLD the
 same unto and to the use of the said E. F., in fee simple,
 subject to the succession duty (if any) to become payable on
 the decease of the said A. B. (m).

CONVEYANCE
BY TENANT FOR
LIFE AND
REMAINDER-
MAN.

Agreement for
sale.

Witnessing
part.

Tenant for life
and remain-
derman

convey to
purchaser in
fee.

IN WITNESS, &c.

(l) See *supra*, p. 105, note. If, however, it is arranged that the duty shall be paid in advance, the words "subject to the succession duty," &c., will be omitted in the above recital, and the following recital will be inserted:—

Recital where
succession
duty paid in
advance.

"AND WHEREAS the succession duty which will become payable for or in respect of the said hereditaments upon the decease of the said A. B., has before the execution of these presents been compounded for and satisfied in advance, under the provisions in that behalf contained in the 'Succession Duty Act, 1853.'"

(m) It is sometimes proposed that the vendor shall covenant to indemnify the purchaser against the succession duty, instead of compounding for it, but the objection to this plan is that the vendor, by such a covenant, may render himself liable for a larger sum than would have been payable if no alienation had taken place, the duty being calculated on the life of the actual successor, who may be a much younger man than the original successor. If, however, it is so wished, the following may be inserted:—

"AND THE SAID C. D. hereby covenants with the said E. F., that the said C. D., his heirs, executors, or administrators, will pay the succession duty (if any) to become payable upon the decease of the said A. B., for or in respect of the hereditaments hereby conveyed, and will keep indemnified the said E. F., and his estate and effects, from and against the said succession duty, and all claims and demands on account of the same."

No. LXXXII.

CONVEYANCE
OF REMAINDER
IN FEE.

CONVEYANCE of a REMAINDER in FREE SIMPLE EX-
PECTANT on a LIFE ESTATE (n) to a PURCHASER subject
to the SUCCESSION DUTY (o).

Parties.

Recite title of
vendor.

Agreement for
sale.

Witnessing
part.

Vendor
conveys
(subject to life
estate)
to purchaser
in fee.

THIS INDENTURE, made the — day of —, BETWEEN
A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*pur-
chaser*), of the other part (*Recite will of X. Y. devising the
property to use of G. B. for life, with remainder to A. B. in
fee*): AND WHEREAS the said A. B. hath agreed to sell to the
said C. D. the hereditaments hereinafter described, subject to
the life estate therein of the said G. B., at the price of £— :
NOW THIS INDENTURE WITNESSETH, that in con-
sideration, &c. (*the receipt, &c.*), the said A. B., as beneficial
owner, hereby conveys unto the said C. D., ALL, &c. (*parcels*):
To HOLD the same unto and to the use of the said C. D., in fee
simple, subject to the life estate therein of the said G. B., and
to the succession duty (if any) which will become payable upon
his decease for or in respect of the said hereditaments (*p*).

IN WITNESS, &c.

(n) The 31 Vict. c. 4, provides, that "no purchase made *bonâ fide* and without fraud or unfair dealing of any reversionary interest in real or personal estate, shall, after the 1st of January, 1868, be opened or set aside merely on the ground of under value." The jurisdiction of the Court over unconscionable bargains is not affected by this Act. (*Tyler v. Yates*, L. R. 11 Eq. 265; *The Earl of Aylesford v. Morris*, L. R. 8 Ch. 484; *Neville v. Snelling*, 15 Ch. D. 679; *Bettyers v. Maywind*, W. N. 1883, p. 38; *Fry v. Lane*, W. N. 1888, p. 212.)

(o) See *suprà*, pp. 105, 325, notes.

(p) An express covenant from the purchaser to indemnify the vendor against the succession duty is unnecessary, as it is clear that A. B., the remainderman, after aliening his remainder, is not liable to the duty. He is not the successor, although he would have been so, but for the alienation. The successor is C. D. if living, when the tenant for life dies, and the duty payable by him, although at the same rate, is a different sum to that which A. B. would have had to pay.

No. LXXXIII.

CONVEYANCE of FREEHOLDS by the PERSONAL REPRESENTATIVE of a deceased VENDOR, by virtue of the 4th section of the CONVEYANCING ACT, 1881.

CONVEYANCE
BY PERSONAL
REPRESENTATIVE OF
DECEASED
VENDOR.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*personal representative of X. Y.*), of the one part, and C. D., of, &c. (*purchaser*), of the other part: WHEREAS by a memorandum of agreement dated the — day of —, and made between X. Y., of the one part, and the said C. D., of the other part, the said X. Y. agreed to sell to the said C. D., and the said C. D. agreed to purchase of him the hereditaments hereinafter described at the price of £—, and thereupon the sum of £— was paid by the said C. D. to the said X. Y. by way of deposit and in part payment of the said purchase-money, but no further part of the said purchase-money has been paid by the said C. D. up to the date of these presents: AND WHEREAS the said X. Y. died on the — day of —, 1884, intestate, and letters of administration of his personal estate and effects were granted on the — day of — to the said A. B. by —: NOW THIS INDENTURE WITNESSETH, that in pursuance of the aforesaid agreement, and in consideration of the sum of £— so paid by way of deposit as aforesaid, and in consideration of the sum of £— now paid by the said C. D. to the said A. B. as the personal representative of the said X. Y. (the payment and receipt in manner aforesaid of which said several sums of £— and £—, making together the said purchase-money or sum of £—, the said A. B., as such personal representative as aforesaid, hereby acknowledges), the said A. B., as such personal representative as aforesaid, and by virtue of the Conveyancing and Law of Property Act, 1881, hereby conveys unto the said G. H., ALL. &c. (*parcels*): To HOLD the same unto and to the use of the said C. D. in fee simple.

Parties.

Recite agreement for sale of freeholds.

Payment of deposit to vendor.

Death of vendor intestate.

Letters of administration to his effects.

Consideration sum paid by way of deposit.

Remainder of purchase-money paid to administrator.

Conveyance of parcels by legal personal representative of vendor to purchaser in fee.

IN WITNESS, &c.

No. LXXXIV.

CONVEYANCE
TO DEVISEE OF
PURCHASER.

CONVEYANCE of FREEHOLDS to DEVISEE of PURCHASER
*who DIED BEFORE PAYMENT of PURCHASE MONEY or
EXECUTION of the CONVEYANCE (g).*

Parties. THIS INDENTURE, made the — day of —, BETWEEN
A. B., of, &c. (*venditor*), of the one part, and C. D. (*devisee of the*
Agreement to *purchaser*), of the other part: WHEREAS by a memorandum of
sell to E. F. agreement dated the — day of —, and entered into be-
tween the said A. B. of the one part, and E. F., of, &c., of the
other part, the said A. B. agreed to sell, and the said E. F.
agreed to purchase the hereditaments hereinafter described at
the price of £1,000, and it was thereby agreed that the sum of
£200, part of the said purchase-money, should be paid on the
signature of the agreement now in recital, and that the remainder
of the said purchase-money should be paid and the conveyance
of the said hereditaments to the said E. F. should be executed on
the — day of — then next: AND WHEREAS the sum of £200
part of the said purchase-money was paid by the said E. F. to
the said A. B. on the signature of the said agreement, as the said
Will of E. F. A. B. hereby admits: AND WHEREAS the said E. F. died on the
devising his — day of —, having made his will, dated the — day
real estate to of —, whereby he devised all his real estate to the said
C. D. C. D., and the said will was duly proved on the — day
of —, in the principal Probate Registry of the High Court
of Justice: AND WHEREAS the said recited agreement still
remains uncompleted, and the sum of £800, being the remainder
of the said purchase-money, still remains unpaid: NOW THIS
That agree- INDENTURE WITNESSETH, that in pursuance of the said
ment remains recited memorandum of agreement, and in consideration of the
uncompleted said sum of £200 to the said A. B. paid by the said E. F. as
and part of hereinbefore mentioned, and of the sum of £800 to the said
purchase- A. B. now paid by the said C. D. (the receipt of which said
money remains sums of £200 and £800, making together the said purchase-
unpaid. devisee,
In considera-
tion of re-
mainder of
purchase-
money paid by
devisee,

(g) See 30 & 31 Vict. c. 69; 40 & 41 Vict. c. 34; and Dissertation on
Mortgages, *infra*, p. 500.

money or sum of £1,000, the said A. B. hereby acknowledges), the said A. B. as beneficial owner hereby conveys unto the said C. D., ALL, &c. (*parcels*): To HOLD the same unto and to the use of the said C. D. in fee simple.

IN WITNESS, &c.

CONVEYANCE
TO DEVISEE OF
PURCHASER.

vendor con-
veys parcels
to devisee of
purchaser.

No. LXXXV.

CONVEYANCE of FREEHOLDS to TRUSTEES as PURCHASERS under a POWER contained in a SETTLEMENT to lay out TRUST MONEY in the PURCHASE of LAND (*r*).

CONVEYANCE
TO TRUSTEES
PURCHASERS
UNDER POWER
TO LAY OUT
TRUST MONEY
IN LAND.

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c. (*vendor*), of the first part, C. D. of, &c., and E. F. of, &c. (*trustees*), of the second part, and G. H. of, &c., and L. his wife (*consenting parties to purchase*), of the third part (*Recite settlement on marriage of G. H. and L. his wife, then L. M., whereby certain trust funds were settled with a power for the trustees at the request of husband and wife to lay out any part thereof in the purchase of land (s),—agreement by A. B. to sell to C. D. and E. F.*): AND WHEREAS the said agreement for purchase was entered into by the said C. D. and E. F. at the request of the said G. H. and L. his wife, in exercise of the power of purchasing land contained in the said indenture of settlement as aforesaid, and the said purchase-money of £— has been raised by the said C. D. and E. F. at the like request out of the trust funds comprised in the said indenture: NOW

Parties.

Recite settle-
ment with
power to pur-
chase land.

Agreement
for purchase.
That pur-
chasers en-
tered into
agreement as
trustees.

Witnessing
part.

(*r*) When land is purchased by trustees under a power of laying out trust money in the purchase of land, the conveyance is sometimes made to the trustees as ordinary purchasers, without disclosing on the face of the instrument the fact of their being trustees. But in most cases, if not in all, it becomes necessary, sooner or later, to disclose the trust on the face of the title, and it seems, therefore, the better course to let the trust appear in the original purchase deed, as in the above Precedent, or in a deed indorsed thereon, as in Precedent No. LXXXVII., *infra*.

The above opinion is not affected by the recent case of *In re Harman and Uxbridge, &c. Rail. Co.*, 24 Ch. D. 720.

(*s*) For a shorter form of recital, see Precedent No. LXXXVIII., p. 332.

When land is
purchased by
trustees the
trust should
in general be
disclosed.

CONVEYANCE
TO TRUSTEES
PURCHASERS
UNDER POWER
TO LAY OUT
TRUST MONEY
IN LAND.

Considera-
tion.

Vendor
conveys

to trustees
upon trusts of
settlement.

THIS INDENTURE WITNESSETH that in pursuance of the said agreement, and in consideration of the sum of £—— to the said A. B. paid by the said C. D. and E. F. on or before the execution of these presents out of the trust funds comprised in the said indenture of settlement at the request of the said G. H. and L. his wife (*the receipt, &c.*), the said A. B., as beneficial owner, hereby conveys unto the said C. D. and E. F., ALL, &c. (*parcels*): To HOLD the same unto and to the use of the said C. D. and E. F., in fee simple, UPON THE TRUSTS, and with and subject to the powers and provisions by and in the hereinbefore recited indenture of settlement declared and contained concerning the hereditaments thereby authorized to be purchased with or out of the said trust funds, or such of them as are now subsisting and capable of taking effect.

IN WITNESS, &c.

No. LXXXVI.

CONVEYANCE
TO PURCHASERS
AS JOINT
TENANTS.

CONVEYANCE to PURCHASERS as JOINT TENANTS.

Parties.

Considera-
tion.

Vendor
conveys
to purchasers
as joint
tenants.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c., and E. F. of, &c. (*purchasers*), of the other part: WITNESSETH, that in consideration of the sum of £—— as purchase-money to the said A. B. paid by the said C. D. and E. F. out of moneys belonging to them on a joint account (*the receipt, &c.*), the said A. B., as beneficial owner, hereby conveys unto the said C. D. and E. F., ALL, &c. (*parcels*): To HOLD the same unto and to the use of the said C. D. and E. F., in fee simple.

IN WITNESS, &c.

No. LXXXVII.

DECLARATION of TRUST of LANDS PURCHASED under
a POWER in a SETTLEMENT of PERSONAL ESTATE (by
indorsement on Precedent No. LXXXV.).

DECLARATION
OF TRUST OF
LANDS PUR-
CHASED UNDER
POWER IN
SETTLEMENT.

TO ALL TO WHOM THESE PRESENTS shall come, THE within named C. D. and E. F. and G. H. of, &c., and L. his wife, send greeting (*Recite settlement as in Precedent No. LXXXV.*): AND WHEREAS the purchase of the hereditaments comprised in the within written indenture was made by the said C. D. and E. F. as the trustees of the hereinbefore recited indenture of settlement at the request in writing of the said G. H. and L. his wife, and in exercise of the power in that behalf contained in the last-mentioned indenture as aforesaid, and the within mentioned purchase-money of £— was raised by the said C. D. and E. F. at the like request out of the trust funds comprised in the same indenture, as the said C. D., E. F., G. H. and L. his wife, do hereby respectively declare: NOW THESE PRESENTS WITNESSETH, that in consideration of the premises it is hereby declared and agreed that the said C. D. and E. F., their heirs and assigns, shall stand and be seised of and interested in all the hereditaments and premises comprised in and conveyed by the within written indenture, UPON THE TRUSTS, &c. (*as in Precedent No. LXXXV.*).

Parties.

Recite that
purchase was
made by
trustees under
power in
settlement to
purchase
lands.

Witnessing
part.

Declaration
of trust.

IN WITNESS, &c.

No. LXXXVIII.

ASSIGNMENT of a LEASEHOLD HOUSE to TRUSTEES pur-
chasing under a POWER in a MONEY SETTLEMENT, the
HOUSE having been in the first instance assigned to the
BENEFICIARY FOR LIFE who assigns to the TRUSTEES (t).

ASSIGNMENT OF
LEASEHOLDS TO
TRUSTEES
UNDER POWER
IN MONEY
SETTLEMENT.

THIS INDENTURE, made the — day of —, BETWEEN Parties.
A. B. of, &c. (*assignor*), of the one part, and C. D. of, &c., and

(t) A trustee purchasing leaseholds is bound, like any other purchaser, to covenant with the vendor to indemnify him against the rent and cove-

ASSIGNMENT OF
LEASEHOLDS TO
TRUSTEES
UNDER POWER
IN MONEY
SETTLEMENT.

Recite lease,
and assign-
ment by
vendor to
assignor.

That trustees
are authorized
to lay out trust
money in
purchase of a
house.

That purchase
made by
assignor was
on behalf of
trustees, and
agreement for
assignment.

Assignment to
trustees.

Plan where
trustees pur-
chase lease-
holds, as
regards the
liability to the
rent and
lessee's cove-
nants.

E. F., of, &c. (*trustees*), of the other part: WHEREAS by an indenture, &c. (*recite lease to G. H.*): AND WHEREAS by an indenture bearing even date with these presents, and made between the said G. H. of the one part, and the said A. B. of the other part, in consideration of the sum of £—— paid by the said A. B. as purchase-money, the said G. H. has assigned the said leasehold premises unto the said A. B. for the residue of the said term of —— years, subject to the said rent, covenants and conditions: AND WHEREAS the said C. D. and E. F. are the trustees of an indenture of settlement dated, &c., and made, &c., and as such trustees are authorized with the consent in writing of the said A. B. to invest any part of the trust money settled by the said indenture in the purchase of a messuage or dwelling-house, being freehold or copyhold of inheritance or leasehold held for a term whereof sixty years at least are unexpired at the time of the purchase, which messuage or dwelling-house is to be held by them upon the trusts declared concerning the same by the said indenture: AND WHEREAS the purchase expressed to be made by the said indenture bearing even date herewith has been made by the said A. B. on behalf of the said C. D. and E. F., and the purchase-money of £—— therein expressed to be paid by the said A. B. has been in fact paid by the said C. D. and E. F. out of the trust money settled by the said indenture of settlement; And the said A. B. has therefore agreed to make such assignment as is hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement and in consideration of the premises the said A. B. as trustee hereby assigns unto the said C. D. and E. F. THE messuage or dwelling-house and premises comprised in the said indenture of lease of the —— day of ——, and thereby demised: To HOLD the same unto the said

nants in the lease. Whenever, therefore, a purchase is made at the request of the beneficiary for life, it will be prudent for the trustees to stipulate that the covenant shall be given by the beneficiary and not by themselves. In that case, the most convenient plan is for the beneficiary to enter into the contract with the vendor, and to take an assignment to himself in the first instance, which assignment will be in the form of Precedent No. X., and contain the usual covenant to indemnify the vendor. The beneficiary will then by a second deed (of which the above is a precedent) assign the property to the trustees, who will enter into no covenant. The result will be that the liability of the trustees will cease on their parting with the property.

C. D. and E. F. for all the residue now unexpired of the said term of — years, subject to the rent reserved by the said indenture of lease and to the covenants and conditions therein contained, and on the lessee's part to be observed and performed: NEVERTHELESS, upon the trusts and with and subject to the powers and provisions applicable thereto under the said indenture of settlement as having been purchased out of the said trust moneys.

IN WITNESS, &c.

ASSIGNMENT OF
LEASEHOLDS TO
TRUSTEES
UNDER POWER
IN MONEY
SETTLEMENT.

Upon trusts of
settlement.

No. LXXXIX.

CONVEYANCE to the Uses of a REAL PROPERTY SETTLEMENT where the PURCHASE is made with MONEYS arising from a SALE of the SETTLED PROPERTY under a POWER of SALE.

CONVEYANCE
TO USES OF
REAL PROPERTY
SETTLEMENT.

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c. (*vendor*), of the first part, C. D. of, &c., and E. F. of, &c. (*purchasers and trustees*), of the second part, and G. H. of, &c. (*tenant for life under the settlement*), of the third part: WHEREAS, the said C. D. and E. F. are the trustees of an indenture dated, &c., and made between, &c., being a settlement of divers messuages, lands, and hereditaments situate in the parish of — in the county of —, in the said indenture particularly described, and as such trustees they have in their hands money arising from the sale of part of the settled hereditaments, which money is liable to be laid out with the consent of the said G. H. as tenant for life in possession in the purchase of other hereditaments to be settled to the like uses: AND WHEREAS the said C. D. and E. F. as such trustees as aforesaid, with the consent of the said G. H., have agreed to purchase from the said A. B. the hereditaments hereinafter described at the price of £—: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £— to the said A. B. paid by the said C. D. and E. F., on or before the

Parties.

Recite settle-
ment of real
estate.

Agreement by
trustees of
settlement to
purchase.

Witnessing
part.
Considera-
tion.

**CONVEYANCE
TO USES OF
REAL PROPERTY
SETTLEMENT.**

Vendor con-
veys parcels
to uses of
settlement.

Acknowledg-
ment and
undertaking as
to documents.

execution of these presents, with the consent of the said G. H., out of the trust money hereinbefore referred to (*the receipt whereof, &c.*), the said A. B., as beneficial owner, hereby conveys unto the said C. D. and E. F., ALL, &c. (*parcels*): To HOLD the same unto the said C. D. and E. F. in fee simple, To THE USES, upon the trusts, and with and subject to the powers and provisions by and in the hereinbefore recited indenture of settlement declared and contained concerning the hereditaments thereby settled, or such of them as are now subsisting and capable of taking effect, but not so as to increase or multiply charges or powers of charging: AND the said A. B. hereby acknowledges the right of the said C. D. and E. F., and of every person having or claiming through or under them, to production of the documents mentioned in the schedule hereto, and to delivery of copies thereof, and hereby undertakes for the safe custody thereof.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. XC.

**CONVEYANCE
TO USES OF
REAL PROPERTY
SETTLEMENT.**

CONVEYANCE to the Uses of a REAL PROPERTY SETTLEMENT, where the PURCHASE is made with MONEY liable to be laid out in the PURCHASE of LANDS, and where there have been several SUBSEQUENT Deeds SUPPLEMENTAL to the SETTLEMENT.

Parties.

Recite that
purchasers are
trustees of
settlement.

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c. (*vendor*), of the first part, C. D. of, &c., and E. F. of, &c. (*purchasers and trustees*), of the second part, and G. H. of, &c. (*tenant for life under the settlement*), of the third part: WHEREAS the said C. D. and E. F. are the trustees of the indenture of settlement firstly mentioned in the first schedule hereto, being a settlement of the capital message or

mansion-house, called —, and of divers other messuages, lands and hereditaments, situate in the county of —, and as such trustees they have in their hands money liable to be laid out with the consent of the said G. H., who is the tenant for life in possession under the said settlement, in the purchase of lands to be settled to the uses hereinafter mentioned: AND WHEREAS the said C. D. and E. F., as such trustees as aforesaid, with the consent of the said G. H., have agreed with the said A. B. to purchase from him the hereditaments hereinafter described at the price of £—: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £— to the said A. B. paid by the said C. D. and E. F. on or before the execution of these presents out of the trust-money hereinbefore referred to (the receipt whereof the said A. B. hereby acknowledges), the said A. B., as beneficial owner, hereby conveys unto the said C. D. and E. F., ALL, &c. (*parcels*): To HOLD the same unto the said C. D. and E. F., in fee simple, To THE USES, upon the trusts, and with and subject to the powers and provisions to, upon, with, and subject to which the said capital messuage, called —, and the lands settled therewith, now stand limited under or by virtue of the deeds mentioned in the first schedule hereto. (*Add, if required, acknowledgment and undertaking by A. B. as to documents as in last precedent.*)

CONVEYANCE
TO USES OF
REAL PROPERTY
SETTLEMENT.

Agreement to
purchase.

Witnessing
part.

Vendor
conveys to
trustees.
To uses, &c.,
to which
settled pro-
perty stands
limited under
settlement and
subsequent
deeds.

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

INDENTURE OF SETTLEMENT between, &c. (*parties*).

1st January,
1850.

INDENTURE between, &c. (*parties*), being an appointment of new trustees of the said indenture of settlement.

1st May, 1860.

INDENTURE, &c. (*parties*), being a deed creating a jointure in favour of —, and charging the settled estates with portions for the younger children of —.

1st June, 1865.

INDENTURE between, &c. (*parties*), and enrolled in the High Court of Justice, Chancery Division, as a disentailing deed.

1st Aug. 1875.

CONVEYANCE
TO USES OF
REAL PROPERTY
SETTLEMENT.

INDENTURE between, &c. (*parties*), being a resettlement of the settled estates.

2nd Aug. 1875.

THE SECOND SCHEDULE ABOVE REFERRED TO.
(*To comprise documents.*)

XCI.

CONVEYANCE
AND DECLARA-
TION OF TRUST
OF FREEHOLDS,
COPYHOLDS,
AND LEASE-
HOLDS.

CONVEYANCE and DECLARATION of TRUST of FREE-
HOLDS, COPYHOLDS, and LEASEHOLDS, purchased with
MONEYS arising from a SALE of SETTLED PROPERTY (*u*).

Parties.

THIS INDENTURE, made the — day of —, BETWEEN
A. B. of, &c., and C. D. of, &c. (*trustees*), of the first part, E. F.
of, &c., and G. his wife, of the second part, and L. M. of,
&c. (*grantee to uses*), of the third part (*Recite the settlement
whereby certain freehold hereditaments were limited to the said
A. B. and C. D. and their heirs, to the use of E. F. for his life,
with remainder to G. his wife, for her life, with divers remainders
over in strict settlement, and also the power of sale and exchange
contained therein whereby the said A. B. and C. D. were empowered
to sell the hereditaments with the consent of the said E. F. and G.
his wife, and were directed, with the like consent, to invest the moneys
in the purchase of other freehold, copyhold, or leasehold heredita-
ments, to be settled to the same uses, or upon corresponding trusts*) :
AND WHEREAS the said A. B. and C. D. have from time to time
at the request and by the direction of the said E. F. and G.
his wife, sold the greater part of the hereditaments comprised in
the said indenture of settlement, for sums amounting together
to £46,000, after deducting the expenses of the sales thereof :

Sale of lands
under power
of sale and
exchange.

(*u*) It is sometimes convenient to have the conveyance made in the first instance to the trustees as if they were purchasers on their own account, and to have a conveyance by a separate instrument from the trustees of the settlement, according to the method adopted in this Precedent.

AND WHEREAS in pursuance of the direction in that behalf contained in the said indenture of settlement, the said A. B. and C. D., with the consent of the said E. F. and G. his wife have laid out the said sum of £46,000 in the purchase of the several freehold, copyhold, and leasehold hereditaments mentioned and described in the schedule hereunder written, and have caused the same to be respectively conveyed, surrendered, and assigned unto them as appears in the said schedule: AND WHEREAS the said A. B. and C. D. at the request of the said E. F. and G. his wife, have agreed to make such conveyance and declaration of trust of the said purchased hereditaments respectively as are hereinafter respectively contained: NOW THIS INDENTURE WITNESSETH, that in consideration of the premises, the said A. B. and C. D., as trustees, at the request of the said E. F. and G. his wife, hereby convey unto the said L. M. ALL the messuages, lands, tenements, and hereditaments mentioned and described in the first part of the schedule hereunder written: To HOLD the same unto the said L. M. in fee simple, To THE USES, &c. (*as in last Precedent*, p. 335). AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the premises, it is hereby agreed and declared that the said A. B. and C. D., their heirs, executors, administrators, and assigns, respectively, shall henceforth stand seised and possessed of, and interested in, ALL the copyhold and leasehold messuages, lands, tenements, and hereditaments mentioned and described in the second and third parts of the schedule hereunder written: UPON SUCH TRUSTS, and with, under, and subject to such powers and provisions as will correspond as nearly as the different nature and tenure of the premises will permit, with the uses, trusts, powers, and provisions hereinbefore by reference declared and contained concerning the freehold hereditaments hereby conveyed: BUT so NEVERTHELESS, that the said leasehold hereditaments shall not vest absolutely in any person being tenant in tail by purchase of the said freehold hereditaments, unless he or she shall attain the age of twenty-one years, but upon his or her death under that age, shall go and devolve in the same manner as if the said leasehold hereditaments had been of freehold tenure, and had been hereinbefore conveyed as freehold accordingly.

IN WITNESS, &c.

VOL. I.

Z

CONVEYANCE
AND DECLARA-
TION OF TRUST
OF FREEHOLDS,
COPYHOLDS,
AND LEASE-
HOLDS.

Purchases
made by
trustees with
sale moneys. .

Agreement by
trustees to
convey to uses
of settlement,
&c.

First witness-
ing part.

Trustees
convey.

Parcels in
first part of
schedule

to uses of
settlement.
Second wit-
nessing part.

Declaration
of trust of
copyholds and
leaseholds in
second and
third parts of
schedule.

CONVEYANCE
AND DECLARA-
TION OF TRUST
OF FREEHOLDS,
COPYHOLDS,
AND LEASE-
HOLDS.

THE SCHEDULE ABOVE REFERRED TO.

The 1st Part.

Freehold
parcels.

ALL THAT, &c. (*describe parcels*), which hereditaments and premises were conveyed unto and to the use of the said A. B. and C. D., their heirs and assigns, by an indenture dated, &c., and made between (*parties*): ALSO ALL THAT, &c. (*describe other parcels*), which last mentioned hereditaments and premises were conveyed, &c. (*as above*).

The 2nd Part.

Copyhold
parcels.

ALL THAT, &c. (*parcels*), to which hereditaments and premises the said A. B. and C. D. were admitted tenants, upon the surrender of M. N., at a court holden in and for the manor of —, on the — day of —: ALSO ALL THAT, &c. (*parcels*), to which last mentioned hereditaments and premises, being held of the manor of — the said A. B. and C. D. were out of court admitted tenants, on the — day of —, upon the surrender of O. P.

The 3rd Part.

Leasehold
parcels.

ALL THAT, &c. (*parcels*), which premises were by an indenture dated, &c., and made, &c., assigned unto the said A. B. and C. D., their executors, administrators and assigns, for the residue of a term of — years, created by an indenture of lease, dated, &c., and made, &c.

No. XCII.

CONVEYANCE and Assignment of FREEHOLDS and LEASEHOLDS to the Uses and upon the TRUSTS of a SETTLEMENT where the PURCHASE is made with CAPITAL MONEY arising under the SETTLED LAND ACT, 1882, from the sale of PART of the SETTLED PROPERTY (x).

CONVEYANCE, &c., WITH MONIES FROM SALE BY TENANT FOR LIFE UNDER SETTLED LAND ACT.

THIS INDENTURE, made the — day of —, BETWEEN Parties.
A. B. of, &c. (*venditor*), of the first part, C. D. of, &c. (*tenant for life*), of the second part, and E. F. of, &c., and G. H. of, &c. (*trustees*), of the third part: WHEREAS, under or by virtue of an indenture dated, &c., and made, &c., being a settlement of divers messuages, lands, and hereditaments situate in, &c., the said C. D. is beneficially entitled as tenant for life in possession to the settled hereditaments, and the said E. F. and G. H. are the present trustees of the said indenture of settlement for the purposes of the Settled Land Act, 1882, and they have in their hands capital money arising under the said Act from land settled by the said indenture: AND WHEREAS by the direction of the said C. D. the said E. F. and G. H. have agreed to invest the sum of £—, being part of the said capital money, in the purchase of the freehold and leasehold hereditaments and premises hereinafter described: NOW THIS INDENTURE Recite settlement.
WITNESSETH, that in consideration of the sum of £— Agreement by trustees by direction of tenant for life to invest in land.
to the said A. B. paid by the said E. F. and G. H. as such Consideration.
trustees as aforesaid on or before the execution of these presents by the direction of the said C. D. out of capital money in their hands as aforesaid (*the receipt, &c.*), the said A. B. as Vendor conveys and assigns.
beneficial owner hereby conveys and assigns unto the said E. F. and G. H., *First*, ALL, &c. (*freehold parcels*), *Secondly* (*leasehold parcels*): To HOLD the hereditaments and premises firstly here- Freeholds and leaseholds.
inbefore described unto the said E. F. and G. H., in fee simple, To the USES, upon the trusts and subject to the powers and provisions which under the said indenture of settlement or by reason of the exercise of any power of charging therein con- To hold freeholds to uses of hereditaments comprised in the settlement.
tained are subsisting with respect to the hereditaments thereby

(x) See Settled Land Act, 1882, ss. 22, 24.

CONVEYANCE,
&c., WITH
MONEYS FROM
SALE BY
TENANT FOR
LIFE UNDER
SETTLED LAND
ACT.

To hold lease-
holds to trust-
tees upon
trusts of
freeholds
comprised in
settlement,
except as
therein
mentioned.

settled, or as near thereto as circumstances will permit, but not so as to increase or multiply charges or powers of charging, AND TO HOLD the hereditaments and premises secondly hereinbefore described unto the said E. F. and G. H. for the residue now unexpired of the term of 1000 years therein created by an indenture dated, &c., and made, &c., UPON trusts and subject to powers and provisions corresponding as nearly as the law and circumstances will permit with the uses, trusts, powers, and provisions to, on, and subject to which the hereditaments and premises firstly hereinbefore described have been conveyed as aforesaid: YET SO, NEVERTHELESS, that the beneficial interest in the said leasehold premises shall not vest absolutely in any person who by the said indenture of settlement is made by purchase tenant in tail male, and who shall die under the age of twenty-one years, but shall on the death of such person go as the said hereditaments firstly hereinbefore described would go.

IN WITNESS, &c.

No. XCIII.

CONVEYANCE
RESERVING
LIFE ESTATE TO
VENDOR.

CONVEYANCE *by an OWNER in FEE SIMPLE to a PURCHASER, reserving to the VENDOR an ESTATE during his LIFE—COVENANTS by the VENDOR to REPAIR and INSURE during his LIFE, and provisions as to TIMBER.*

Parties.

Agreement
for sale of
reversionary
estate in fee
simple.

Witnessing
part.

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: WHEREAS the said A. B. has agreed to sell to the said C. D. a reversionary estate in fee simple, to commence on the death of the said A. B., in the hereditaments hereinafter described, at the price of £—, and it has been agreed that such sale shall be carried into effect by a conveyance to the uses and in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B., as beneficial owner,

hereby conveys unto the said C. D. ALL, &c. (*parcels*), To HOLD the same unto the said C. D. in fee simple, To the use of the said A. B. during his life, and after his decease To THE USE of the said C. D. in fee simple: AND THE SAID A. B. hereby covenants with the said C. D., that the said A. B. will at his own expense during his life keep in good and complete repair and condition the capital messuage called —, and all other the buildings and erections for the time being upon the said premises hereby conveyed, and also all the gates, stiles, and fences upon the premises hereby conveyed; And also will at the like expense during his life adequately insure and keep insured the said capital messuage, and all other the buildings and erections for the time being standing upon the said premises, against loss or damage by fire, in some office or offices in London or Westminster, and also will, when required, produce to the said C. D., his heirs or assigns, or his or their agent, the policies of such insurance, and the receipts for the current year's premiums paid thereon: and also will forthwith, on every occasion on which moneys shall be received by virtue of any such insurance, lay out and expend the same (after deducting necessary expenses) in properly repairing, rebuilding, or reinstating the buildings which shall have been destroyed or damaged: AND ALSO that the said A. B., will not during his life fell or cut down any timber or timber-like trees standing or growing on the said premises hereby conveyed, unless the same may be required for renewing or repairing the park pailings, and then only such as may be properly and fairly felled or cut down without detracting from the enjoyment of the said mansion-house as a place of residence, or the beauty of the said premises hereby conveyed, or unless such timber or trees shall be of such age and in such state as that considered as ornamental timber only the same may properly require to be felled or cut down with a view to the enjoyment of the said mansion-house as a place of residence or the beauty of the said premises hereby conveyed, but so nevertheless that all timber and timber-like trees properly felled or cut down as aforesaid, and the proceeds thereof, shall belong to the said A. B. PROVIDED ALWAYS, that the said A. B., or his assigns, shall give to the said C. D., his heirs or assigns, at least one calendar month's previous notice in writing of the intention of the said A. B., or his assigns, to cut any

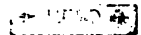
CONVEYANCE
RESERVING
LIFE ESTATE TO
VENDOR.

Vendor
conveys
to purchaser
and his heirs
to use of
vendor for life
with remain-
der to use of
purchaser in
fee.

Covenants by
vendor to keep
in repair
buildings
during his life
and keep
insured
against fire,

not to cut
timber except
such as ought
to be cut.

Vendor to give
notice before
cutting timber.



CONVEYANCE
RESERVING
LIFE ESTATE TO
VENDOR.

Arbitration
clause.

timber or timber-like trees under the provisions hereinbefore contained, and that the trees intended to be cut or felled shall be marked, and shall be shown when required to some person appointed for the purpose by the said C. D., his heirs or assigns; and in case such person shall, on behalf of the said C. D., his heirs or assigns, object to the felling or cutting of any trees, as being improper and coming within the restrictions aforesaid, the same shall not be felled or cut unless and until it shall have been decided by arbitration, as hereinafter provided, that the same may be felled or cut. PROVIDED ALSO, and it is hereby agreed and declared, that if any question or difference shall arise between the said A. B. or his assigns and the said C. D., his heirs or assigns, as to whether any timber or timber-like trees are such as may be properly felled or cut down having regard to the covenant and restrictions aforesaid, such question or difference shall be referred to two arbitrators, or their umpire, pursuant to and so as, with regard to the mode and consequences of the reference and in all other respects, to conform to the provisions in that behalf contained in the "Common Law Procedure Act, 1854," or any then subsisting modification thereof, and every such reference to arbitration shall be made a rule of Her Majesty's High Court of Justice (y).

IN WITNESS, &c.

No. XCIV.

CONVEYANCE
TO RAILWAY
COMPANY.

CONVEYANCE *by an OWNER in FEE to a RAILWAY COMPANY (z).*

Parties.

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c. (*vendor*), of the one part, and The — Railway

Power to
purchase by
agreement.
Parties under
disability able
to sell.

(y) See *supra*, p. 126, note.

(z) By the Lands Clauses Consolidation Act, 1845 (8 Vict. c. 18), power is given to the promoters of undertakings to purchase lands of the owners by agreement. (Sect. 6.)

Parties having only partial interests, or being under disability, are empowered to sell to the company (sects. 7, 22, 25, 38), and the purchase-money or compensation in such cases is to be ascertained either by the verdict of a jury, or arbitration, or by valuation of two surveyors, one to be nominated by the promoters, and the other by the other party, each

Company of the other part: WHEREAS by "the — Railway Act, 18—," in which Act the Lands Clauses Consolidation Act, 1845, is incorporated, the said company is empowered to take

CONVEYANCE
TO RAILWAY
COMPANY.

Recite Rail-
way Act.

of such surveyors annexing to the valuation a declaration in writing as to the correctness thereof (sect. 9), and must be paid into the Bank of England if it amounts to £200 (sect. 69); and if it exceeds £20, but does not amount to £200, then into the Bank, or to trustees to be nominated in writing by the parties entitled to the rents and profits of the lands in respect of which the purchase-money is payable (sect. 71), and be applied as therein directed. (Sects. 69, 73, 74.) Upon the deposit of the purchase-money or compensation in the bank, all such persons are required to convey the purchased lands to the company, and in default thereof the company is empowered to execute a deed poll, which is to have the effect of a conveyance of all the estate in such lands capable of being sold to the company. (Sect. 75.)

When a sum paid into the bank under this Act belongs to a tenant in tail in possession, he must execute a disentailing deed before the Court will pay it out to him. (*Re Butler's Will*, L. R. 16 Eq. 479; *Re Reynolds*, 3 Ch. D. 61.)

Payment of
sum belonging
to tenant in
tail.

The company bears the costs of all conveyances, as well on the part of the vendor as of the purchaser, and of the deducing and evidencing the title to the lands, and also of all abstracts and attested copies which they may require. (Sect. 82.)

Costs.

The powers of the promoters for the compulsory purchase of lands for the purposes of the special Act cannot be exercised after the expiration of the prescribed period; and if no period is prescribed, not after the expiration of three years from the passing of the special Act. (Sect. 123.)

Limit of time
for compulsory
purchase.

All conveyances of copyhold lands under the Lands Clauses Consolidation Act must be entered on the rolls of the manor, and on the payment of the steward's fees he is required to make such enrolment; and it is declared, that within three months after the enrolment of such conveyance, or within one month after the lands shall be entered on by the company, the promoters shall procure the copyhold lands to be enfranchised, and shall apply to the lord of the manor for this purpose, and shall pay a compensation in respect thereof, as provided by the Act. (Sects. 95, 96.)

Conveyance
of copyholds.

The 97th section provides for the enfranchisement by deed poll by the lord of the manor, or, in default thereof by him, by the promoters of the copyholds to be entered upon and taken upon payment or tender of the compensation, or on deposit thereof in the bank, as provided by the Act.

Enfranchise-
ment of copy-
hold.

The 98th section provides for the apportionment of copyhold rents when part only of the land subject to the rent is required. The 108th and six following sections relate to lands in mortgage; and the 119th and three following sections provide for the apportionment of the rents where part only of lands under lease is taken, and for the compensation to be made to tenants.

Clauses as to
copyholds,
lands in mort-
gage, and
under lease.

As to superfluous lands, or, in other words, lands not required for the purposes of the undertaking, the company is required within the prescribed period, or, if no period be prescribed, within ten years after the expiration of the time limited by the special Act for the completion of the works, to sell such superfluous lands, giving, notwithstanding, a right of pre-emption (unless the lands be situate within a town, or be lands built upon or used for building purposes) first to the person then entitled to the lands (if any) from which the same were originally severed, if such person can be found, or if he refuse to purchase or cannot be found, then to the person or persons whose lands may immediately join the lands proposed

Sale of super-
fluous lands
after the expi-
ration of the
time.

CONVEYANCE
TO RAILWAY
COMPANY.Agreement by
company to
purchase.Witnessing
part.

and purchase for the purposes of the railway and works thereby authorized, the pieces of land and hereditaments intended to be hereby conveyed: AND WHEREAS the said company has agreed to purchase from the said A. B. the said pieces of land and hereditaments for the sum of £——, which sum is to include and be in full compensation for all damage to be sustained by the said A. B. by reason of the severing of such lands from the remainder of the estate to which the same belong, or otherwise injuriously affecting such lands by the execution of the works of the said company, and also for all right to require the said company, under or by force of the Railways Clauses Consolidation Act, 1845, to make and maintain such works as are in the same Act referred to, and otherwise might be required to be made and maintained for the accommodation of the owners and occupiers of the lands adjoining to the pieces of land intended to be hereby conveyed (a): NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. paid by the said company on or before the execution of these presents (the receipt, &c.), the said A. B., as bene-

to be sold. The persons to whom the offer of sale is made, if desirous of availing themselves of this right of pre-emption, are *required* to signify such their desire within six weeks after the offer of sale is made to them respectively. (Sects. 127, 128, 129.)

The question whether land is to be deemed superfluous within this section must be determined at the expiration of the ten years. If it is not superfluous then, but becomes so afterwards, the section does not apply. (*South Western Railway v. Marg*, L. R. 7 H. L. 283.) Land is superfluous within the section if at the end of the ten years it is not then wanted for the purpose of the railway, and there are no purposes in connection with the railway for which it can reasonably be expected that the land will be wanted afterwards. (*Hooper v. Bourne*, 5 App. Ca. 1; *Betts v. Great Eastern Rail. Co.*, 3 Ex. D. 182. See, also, *Bird v. Eggleton*, 29 Ch. D. 1012.)

The sale of superfluous land must be absolute without any reservation of interest to the company. (*London and South Western Railway Company v. Gomm*, 20 Ch. D. 562.)

Where there are several properties adjoining to the land which is superfluous, it should be divided among the several owners in proportion to the frontage of each. (*Moody v. Corbett*, L. R. 1 Q. B. 510.) As to what are lands situate within a town, see *Lord Carrington v. Wycombe Rail. Co.*, L. R. 3 Ch. 377. The surface over a tunnel is not superfluous land within the section. (*In re Metropolitan Rail. Co. and Cosh*, 13 Ch. D. 607.)

A railway company in order to improve its property may sell its superfluous lands, subject to restrictive covenants as to user. (*In re Higgins' Contract*, 21 Ch. D. 95.)

(a) If a further sum is to be paid for severance, and is assessed separately, there should be a separate receipt for it; and it will be unnecessary to refer to it in the conveyance.

ficial owner, hereby conveys to the said company: ALL those two pieces or parcels of land situate in the parish of —, in the county of —, containing respectively — and —, and being respectively parts of two closes of meadow ground called respectively — and —, and distinguished in the plan and books of reference of the said railway, deposited in the office of the clerk of the peace for the said county of —, so far as relates to the said parish of —, by the Nos. — and —, And which pieces of land intended to be hereby conveyed are delineated in the plan drawn in the margin of these presents, and are therein coloured red: TOGETHER WITH all ways, rights, and appurtenances thereto belonging (b): AND ALL such estate, right, title and interest in and to the same and every part thereof, as the said A. B. is or shall become seised or possessed of, or is by the said — Railway Act, 18—, or any Act therein incorporated, empowered to convey (c): To HOLD the same to the said company, their successors and assigns for ever, according to the true intent and meaning of the said — Railway Act, 18—, AND the said A. B. hereby acknowledges the right of the said company to production of the documents of title mentioned in the Schedule hereto and to delivery of copies thereof, and hereby undertakes for the safe custody thereof.

CONVEYANCE
TO RAILWAY
COMPANY.

Vendor con-
veys parcels,

and all the
estate,

to railway
company.

Vendor gives
acknowledg-
ment and
undertaking.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

(b) If the mines are included in the purchase, it is necessary to mention them, otherwise they will not pass. (See 8 Vict. c. 20, s. 77.)

(c) The words, "and all the estate, &c.," are retained because it is desirable to keep as nearly as possible to the form given in the schedule to the Lands Clauses Act.

No. XCV.

CONVEYANCE
BY TENANT FOR
LIFE TO RAIL-
WAY COMPANY.

CONVEYANCE *by* TENANT *for* LIFE *to a* RAILWAY
COMPANY.

Parties.

That land is
required for
purpose of
railway.

Agreement by
tenant for life
to sell,
at separate
sums for
purchase-
money and
compensation
for severance,

such sums
having been
determined
by valuation
of surveyors.

Witnessing
part.

Consideration.

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c. (*rendor*), of the one part, and the — Railway Company incorporated by the — Railway Act, 18—, of the other part (*Recite instrument under which A. B. is tenant for life*): AND WHEREAS the piece of land and hereditaments hereinafter described and intended to be hereby conveyed are required for the purpose of the undertaking authorized by the said — Railway Act: AND WHEREAS the said A. B., pursuant to the power in this behalf conferred upon him by the Lands Clauses Consolidation Act, 1845, which is incorporated in the said — Railway Act, 18—, has agreed to sell to the said company the said piece of land and hereditaments, and hath agreed to accept the sum of £— as the purchase-money thereof, and the further sum of £— as and by way of compensation for the damage to be sustained by him and his successors in title, owners of the said lands, by reason of the severing of the said lands from the remainder of the estate to which the same belong, or otherwise injuriously affecting such lands by the exercise of the powers of such Railway Act, or any Act incorporated therewith; the said sums of £— and £— respectively, being the sums determined as such purchase and compensation money respectively, by the valuation in writing dated the — day of —, of C. D. of, &c., and E. F. of, &c., two able practical surveyors, the said C. D. being nominated by the said A. B., and the said E. F. being nominated by the said company, pursuant to the provisions in that behalf contained in the said Lands Clauses Consolidation Act, 1845: NOW THIS INDENTURE WITNESSETH, that in order to carry into effect the said agreement for sale, and in consideration of the sum of £— (*d*) (the aggregate of

(*d*) Money paid into Court under any Act, and liable to be laid out in land, may be invested in any of the securities in which capital money under the Settled Land Act may be invested. (Settled Land Act, 1882, s. 32.)

the said two sums of £—— and £—— respectively) paid into Court to the account *Ex parte* the —— Railway Company, pursuant to the said —— Railway Act, 18——, by the said —— Railway Company, the said A. B., as to his estate for life in the hereditaments hereinafter described as beneficial owner, and as to the fee simple of the said hereditaments by force and virtue of the said Acts, hereby conveys to the said company ALL, &c. (parcels): TOGETHER WITH all ways, rights, and appurtenances thereto belonging: AND ALL SUCH ESTATE, right, title, and interest in and to the same as the said A. B. now is or shall become seised or possessed of, or is by the said Acts empowered to convey: To HOLD the same unto the said company, their successors and assigns for ever, according to the true intent and meaning of the said Act: AND the said A. B. hereby acknowledges the right of the said company to production of the documents of title mentioned in the Schedule hereto, and to delivery of copies thereof, and hereby undertakes for the safe custody thereof.

CONVEYANCE
BY TENANT FOR
LIFE TO RAIL-
WAY COMPANY.

Vendor con-
veys parcels

to railway
company.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. XCVI.

CONVEYANCE *by a* TENANT FOR LIFE *to a* RAILWAY COMPANY, *under the Powers of the* SETTLED LAND ACT, 1882, *of* LANDS, INCLUDING *the* MINES *there- under (e).*

CONVEYANCE
TO RAILWAY
COMPANY
UNDER POWERS
OF SETTLED
LAND ACT.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*tenant for life*), of the first part, and C. D., of,

Parties.

(e) It is probable that in future when lands are sold to a railway company by a tenant for life, or by other limited owners who have the powers of a tenant for life under the Settled Land Act, 1882, the sale will generally be carried into effect under the power for this purpose conferred by

As to sales by
tenant for life
to railway
company
under Settled
Land Act.

CONVEYANCE
TO RAILWAY
COMPANY
UNDER POWERS
OF SETTLED
LAND ACT.

Recite inden-
ture of settle-
ment dated
1883, whereby
freeholds were
limited to
A. B. for life,
and that C. D.
and E. F. were
thereby
appointed
trustees for
purposes of
Act.

Agreement
by railway
company to
purchase land
and mines.

Consideration
paid to
trustees.

Tenant for
life, pursuant
to power in
Settled Land
Act,

conveys lands
and mines to
company.

Acknowledg-
ment and
undertaking
for safe
custody.

&c. and E. F., of, &c. (*trustees*), of the second part, and The ——— Railway Company incorporated by the ——— Railway Act, 18—, of the third part: WHEREAS, by an indenture dated the ——— day of ———, 1883, and made, &c., the hereditaments therein described, of which the lands intended to be hereby conveyed are part, were conveyed to the use of the said A. B. for his life, and after his decease to the uses therein declared concerning the same, and by the indenture now in recital the said C. D. and E. F. were appointed trustees of the settlement for the purposes of the Settled Land Act, 1882: AND WHEREAS the said company require, and are authorized by the ——— Railway Act, 18—, to take, for the purposes of their undertaking, the lands intended to be hereby conveyed, and the said company have accordingly agreed with the said A. B. to purchase the said lands with the mines and minerals thereunder in consideration of the sum of £——, which is to include and be in full compensation for the damage to be sustained by him and his successors in title, owners of the said lands, by reason of the severing of the said lands from the remainder of the estate to which the same belong, or otherwise injuriously affecting such lands by the execution of the works of the said company: NOW THIS INDENTURE WITNESSETH that in consideration of the sum of £—— to the said C. D. and E. F. as such trustees as aforesaid paid by the said company on or before the execution of these presents by the direction of the said A. B. (the receipt whereof the said C. D. and E. F. hereby acknowledge), the said A. B., in exercise of the power for this purpose vested in him by the Settled Land Act, 1882, and of all other powers (if any) him hereunto enabling, and as beneficial owner, hereby conveys unto the said company ALL, &c. (*parcels*), and also all mines and minerals thereunder, To HOLD the same unto and to the use of the said company, their successors and assigns for ever, according to the true intent and meaning of the said ——— Railway Act (*proviso qualifying statutory covenants, supra*, p. 301): And the said A. B. hereby

that Act, and not under the power conferred by the Lands Clauses Act, as by selling under the former Act the valuation, which would otherwise be necessary can be dispensed with, and the purchase-money can be paid directly to the trustees of the settlement, instead of being obliged to be paid into the bank. (See *supra*, p. 343.)

acknowledges the right of the said company to production of the documents of title mentioned in the schedule hereto, and to delivery of copies thereof, and hereby undertakes for the safe custody thereof.

CONVEYANCE
TO RAILWAY
COMPANY
UNDER POWERS
OF SETTLED
LAND ACT.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. XCVII.

CONVEYANCE *by an OWNER in FEE of COPYHOLDS to a*
RAILWAY COMPANY (*f*).

CONVEYANCE
OF COPYHOLDS
TO RAILWAY
COMPANY.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., as beneficial owner, of, &c. (*vendor*), in consideration of the sum of £—— as purchase-money to me paid by the —— Railway Company, do hereby, in execution of the powers for this purpose given me by the —— Railway Act, and the public Acts incorporated therewith, convey to the said company, their successors and assigns, ALL, &c. (*here describe the parcels*), TOGETHER with all ways, rights, and appurtenances thereto belonging, AND ALL such estate, right, title, and interest in and to the same, and the timber thereupon and the minerals thereunder, as by the said Acts or otherwise I am empowered to convey, To HOLD the premises to the said company, their successors and assigns for ever, according to the true intent and meaning of the said Act.

Consideration.

Conveyance
by owner of
copyholds.

To hold to
company.

IN WITNESS, &c.

(*f*) See p. 343, note.

No. XCVIII.

CONVEYANCE
BY RAILWAY
COMPANY OF
SUPERFLUOUS
LANDS.

CONVEYANCE *by a RAILWAY COMPANY of SUPERFLUOUS
LANDS to a PURCHASER (g).*

Parties.

Recite purchase by and conveyance to the railway company.

Day fixed by the Railway Act for completion of works.

That land is not required by railway company.

Title of C. D. and E. F. to adjoining lands.

Declaration of offer to sell to C. D. and E. F.

THIS INDENTURE, made the — day of —, BETWEEN the — Railway Company, incorporated by the — Railway Act, 18—, of the one part, and A. B. of, &c. (*purchaser*), of the other part: WHEREAS, under the powers of the said — Railway Act, 18— (in which Act the Lands Clauses Consolidation Act, 1845, is incorporated), the said Company some time since purchased from X. Y. of, &c., certain pieces of land and hereditaments, of which the land and hereditaments intended to be hereby granted form part, and the same land and hereditaments were accordingly conveyed to the said Company by an indenture dated the — day of —, and made between the said X. Y. of the one part, and the said Company of the other part: AND WHEREAS the — day of —, 1870, is the time limited by the said — Railway Act, 1860, for the completion of the works thereby authorized: AND WHEREAS the land and hereditaments intended to be hereby granted are not required for the purposes of the said Railway Act: AND WHEREAS the said X. Y. died on the — day of — intestate, leaving C. D. of, &c., and E. F. of, &c., his co-heiresses at law, and the said C. D. and E. F. are the persons now entitled to the lands from which the said lands and hereditaments intended to be hereby granted were severed, and are also owners of the lands immediately adjoining to the last-mentioned lands and hereditaments: AND WHEREAS N. O. of, &c., a person not interested in the matter in question, has made a declaration in writing, dated the — day of —, before P. Q. of, &c., a justice of the peace for the county of —, not interested in the said matter, and has thereby declared that an offer to sell the land and hereditaments intended to be hereby granted was duly made by the said Company to the said C. D. and E. F. on the — day of —, and that such offer was not accepted by the said C. D. and E. F., or either of them, within

(g) See *supra*, p. 343, note.

six weeks of making the same : AND WHEREAS since the date of the said declaration the said Company have agreed to sell to the said A. B. the land and hereditaments intended to be hereby granted, at the price of £—— : NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £—— to the said Company paid by the said A. B. (*the receipt, &c.*), the said —— Company hereby grants (*h*) unto the said A. B., ALL, &c. (*parcels*) : To HOLD the same unto and to the use of the said A. B. in fee simple.

CONVEYANCE
BY RAILWAY
COMPANY OF
SUPERFLUOUS
LANDS.

Agreement for
sale to A. B.
Witnessing
part.
Considera-
tion.
Railway com-
pany convey
to purchaser.

IN WITNESS whereof the said Railway Company have caused their common seal to be hereunto affixed, and the said A. B. has hereunto set his hand and seal the day and year first above written.

The common seal of the —— Railway Company was affixed to the within-written indenture in the presence of us :

E. F. }
G. H. } Directors.
I. K., Secretary.

No. XCIX.

CONVEYANCE by a TENANT FOR LIFE of a PIECE OF LAND to a SCHOOL BOARD (*i*).

CONVEYANCE
TO SCHOOL
BOARD.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the first part, C. D. of, &c., and E. F. of, &c. (*trustees*), of the second part, and the School Board for —— of the third part : WHEREAS under the will of X. Y. of, &c., the said A. B. is tenant for life of the piece of land intended to be

Parties.

Recite that
A. B. is tenant
for life.

(*h*) By the Lands Clauses Consolidation Act, 1845, s. 132, it is provided, that in conveyances of land by the promoters of the undertaking, the word "grant" shall operate as express covenants for title and for further assurance.

When
"grant"
operates
as express
covenants.

(*i*) School Boards are empowered by the 19th section of the Elementary Education Act, 1870, to provide school houses, and improve, enlarge, and fit up any school house provided by them, and to purchase and take on lease any land and any right over land.

School boards
empowered to
purchase and
take on lease.

The conveyance does not require enrolment. (See 51 Vict. c. 42, s. 6.)

CONVEYANCE
TO SCHOOL
BOARD.

Agreement by
school board
to purchase.

Appointment
of trustees to
receive the
purchase-
money.

Witnessing
part.

Vendor
conveys

parcels

to school
board.

hereby conveyed with remainders over: AND WHEREAS the said School Board, being desirous of acquiring the said piece of land as a site for a school, has, under the powers in that behalf vested in the said Board by the Elementary Education Act, 1870, agreed with the said A. B. for the purchase of the fee simple thereof for the sum of £100, which sum has been determined to be not less than the value thereof by the valuation in writing of G. H. of, &c., and I. K. of, &c., two able practical surveyors, the said G. H. being nominated by the said A. B., and the said I. K. being nominated by the said School Board, and which said G. H. and I. K. have annexed to their valuation a declaration in writing subscribed by them of the correctness thereof: AND WHEREAS by a writing dated the — day of —, under the hand of the said A. B., the said C. D. and E. F. have been nominated trustees to receive the purchase-money, and such nomination is approved of by the said School Board, as the said School Board doth hereby declare: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £100 to 'the said C. D. and E. F. as such trustees as aforesaid paid by the said School Board, on or before the execution of these presents (the receipt whereof the said C. D. and E. F. hereby acknowledge) (k), the said A. B. as to his estate for life in the hereditaments hereinafter described, as beneficial owner, and as to the fee simple of the said hereditaments by force and virtue of the said Act, or any Act incorporated therewith, hereby conveys unto the said School Board, ALL THAT, &c. (*parcels*), TOGETHER with all ways, rights, and appurtenances thereunto belonging; AND ALL such estate, right, title and interest in and to the same as the said A. B. now is or shall become possessed of or is by the said Act empowered to convey: To HOLD the same unto the said School Board, their successors and assigns for ever, according to the true intent and meaning of the said Act. (*Proviso qualifying statutory covenants, supra, p. 301.*)

IN WITNESS, &c.

(k) If the purchase-money amounts to £200, this sum must be paid into Court, unless the sale is made by the tenant for life under the powers of the Settled Land Act, 1882. (See *supra*, p. 343, note.)

No. C.

CONVEYANCE of LAND for BUILDING in CONSIDERATION of a PERPETUAL RENT-CHARGE (l). COVENANTS by GRANTEE to BUILD thereon, and to INSURE and KEEP in REPAIR BUILDINGS and other COVENANTS in CONNECTION with the BUILDINGS (m).

BUILDING
GRANT.

THIS INDENTURE (n), made, &c., BETWEEN A. B. of, &c. Parties.
(vendor), of the one part, and C. D. of, &c. (purchaser), of the other part: WITNESSETH, that in consideration of the rent hereinafter limited, and of the covenants of the said C. D.

hereinafter contained, the said A. B., as beneficial owner, hereby conveys unto the said C. D. ALL THAT piece of land situate, &c., and containing, &c., being part of an estate of the said A. B. known as the — estate, which has been laid out for building purposes, and which piece of land intended to be hereby conveyed is delineated in the plan drawn in the margin of these presents and is therein coloured pink, the remainder of the estate being also shown on the said plan and therein coloured yellow: TOGETHER with the messuage or dwelling-house now in course of erection on the said piece of land: To HOLD the same unto the said C. D., in fee simple, To THE USE that the said A. B. shall have, in fee simple, a perpetual yearly rent-charge of £10, issuing out of the said hereditaments and premises, and payable by two equal half-yearly payments on the — day of — and the — day of — in every year, the first half-yearly payment thereof to be made on the — day of — next (o), AND SUBJECT to the said rent-charge, and to the statutory powers and remedies for recovering and compelling payment thereof (o), To THE USE of the said

Grantor conveys parcels

to use that grantor may receive perpetual rent-charge,

and subject thereto to use of grantee in fee.

(l) The stamp on this deed will be £1. (*Supra*, p. 214.)

(m) Grants at a fee farm rent, as they are usually called, are common in Manchester, Bristol, and Bath, and a few other places, and some Precedents of them are therefore inserted. But as will appear from the following notes, the position of the grantor, as regards his remedies for the performance of the grantee's covenants, is decidedly inferior to that of a lessor upon a lease for a long term—say, 999 years.

Position of a grantor of land at a fee farm rent inferior to that of lessor.

(n) This deed should be executed in duplicate.

(o) See sect. 44 of the Conveyancing Act, 1881, which is set out at length in the Appendix.

BUILDING GRANT.	C. D. in fee simple: AND THE SAID C. D. hereby covenants
Covenants by grantee to pay rent.	with the said A. B., his heirs and assigns in manner following (that is to say), THAT the said C. D., his heirs or assigns, will at all times hereafter pay the said yearly rent-charge at the
To complete a dwelling-house within twelve calendar months,	times hereinbefore appointed for payment thereof; AND also will within twelve calendar months next after the date of these presents, at his or their expense, under the inspection and to the satisfaction of the architect for the time being of the said A. B., his heirs or assigns, complete so as to be fit for habitation the messuage or dwelling-house now in course of erection upon the said piece of land, the said messuage or dwelling-house to be, when completed, of the value of £—— at least, and also will, at the request of the said A. B., his heirs or assigns, produce to him or them full and satisfactory vouchers of expenditure to the value aforesaid: AND ALSO will at all times hereafter keep the said messuage or dwelling-house, and all boundary walls and drains belonging thereto, in good and tenantable repair and condition, and will permit the said A. B., his heirs or assigns, and all persons authorised by him or them, once in every year in the daytime, on giving to the tenant or occupier for the time being of the said messuage one week's notice in writing of his or their intention so to do, to enter into and upon the said messuage and proceed to examine the condition thereof: AND ALSO will at all times insure and keep insured against loss or damage by fire the said messuage or dwelling-house in the ——office, or some other public insurance office in the sum of £—— at least, and will on demand produce to the said A. B., his heirs or assigns, the policy or policies of insurance, and the receipt for the premium payable in respect thereof for the current year, and will whenever any loss or damage by fire shall happen to the said messuage or dwelling-house or any part thereof forthwith expend the money received under such insurance as aforesaid, and also such other moneys as may be necessary for the purpose, in rebuilding or reinstating the same (p): AND ALSO, that the
to produce vouchers of expenditure,	
to insure against fire,	
to pay premiums of insurance, and produce policy and receipts.	
Not to alter external eleva-	
Covenants to build, repair, &c., in fee farm grant, do not run with land.	(p) The covenants to build, repair, and insure, &c., do not run as to the burden of them with the land nor as to the benefit of them with the rent, and cannot be made to do so either at law or in equity. Consequently an assign of the rent cannot sue, nor can an assign of the land be sued on them. (Haywood v. Brunswick Building Society, 8 Q. B. D. 403.) The words "heirs and assigns" in the above covenants, therefore, have no

said C. D., his heirs or assigns, will not alter or permit to be altered the external plan or elevation of the said messuage or dwelling-house without the previous consent in writing of the said A. B., his heirs or assigns, nor will without such consent as aforesaid erect upon the said piece of land any other messuage or building than the said messuage or dwelling-house now in course of erection as aforesaid except a stable, or coach-house, or green-houses, or conservatories, in connection therewith: AND ALSO that the said C. D., his heirs or assigns, will not at any time without such consent as aforesaid carry on, or permit to be carried on upon the said premises, any trade or business whatsoever, or use or permit the same to be used for any other purpose than as a private dwelling-house: [AND IT IS HEREBY DECLARED (q) that the restrictive covenants hereinbefore contained are entered into with the said A. B. as the owner of the remainder of the said — estate of which the land hereby conveyed forms part, for the benefit and protection of that estate.] PROVIDED ALWAYS (r), and it is hereby declared, that if the said yearly rent of £—, or any part thereof, shall be in arrear and unpaid for the space of twelve calendar months next after either of the said half-yearly days of payment hereinbefore appointed for payment thereof, or if there shall be a breach of any of the covenants hereinbefore contained on the part of the said C. D., his heirs or assigns, then and in any such case, and notwithstanding the waiver of any previous default or breach, it shall be lawful for the said A. B. or his heirs, into and upon the said premises hereby conveyed, or any part thereof,

BUILDING
GRANT.tion without
consent.Not to erect
other building
orcarry on any
trade without
consent.Declaration
that restrictive
covenants are
entered into
with grantor
as owner of
land retained
by him.Power for
grantor to
re-enter on
non-payment
of rent or
breach of
covenants.

legal efficacy. These observations do not apply to the restrictive covenants which follow, as to which see the next note.

(q) The restrictive covenants in the above Precedent are intended to prevent the value of the land retained by the grantor from being depreciated by the acts prohibited. They can be enforced by injunction against the grantee, and all persons deriving title under him, as volunteers or as purchasers with notice.

(r) This is a common law condition of re-entry, and will practically come to an end whenever the grantor alienates the rent, as it cannot be made to run with it. It is apprehended, moreover, that the benefit of the condition cannot be assigned under the Act 8 & 9 Vict. c. 106, s. 6. (See *Hunt v. Bishop*, 8 Exch. 680; *Hunt v. Remnant*, 9 Exch. 640.)

Sect. 14 of the Conveyancing Act, 1881, enabling the Court to relieve against rights of re-entry or forfeiture for breach of covenants, extends to a grant at a fee-farm rent. (Sub-sect. 3.)

Restrictive
covenants,
how, and by
and against
whom they can
be enforced.Right of
re-entry can-
not be made to
go with rent.Court may re-
lieve against
forfeiture for
breach of
covenants in
fee farm
grants.

**BUILDING
GRANT.**

in the name of the whole, to re-enter, and the same thenceforth to repossess and enjoy, as if these presents had not been made.

IN WITNESS, &c.

No. CI.

**GRANT BY
TENANTS IN
COMMON IN
CONSIDERA-
TION OF PER-
PETUAL RENT.**

CONVEYANCE by TENANTS in COMMON of LAND and three DWELLING-HOUSES which have been ERECTED thereon by the GRANTEE in CONSIDERATION of a perpetual RENT-CHARGE—COVENANTS by the GRANTEE to pay RENT, to INSURE and REPAIR, and NOT to CARRY on OFFENSIVE TRADES, and COVENANTS by GRANTORS to INDEMNIFY against PARAMOUNT RENT.

Parties.

Grantors convey plot of land, and messuages thereon, to grantee.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c., and C. D., of, &c., being tenants in common in equal shares of the hereditaments hereinafter conveyed (grantors), of the one part, and E. F., of, &c. (grantee), of the other part, WITNESSETH, that in consideration of the expense which has been incurred by the said E. F. in the building of the messuages intended to be hereby conveyed, and in consideration also of the yearly rent hereinafter limited, and of the covenants of the said E. F. hereinafter contained, the said A. B., as to one undivided moiety of the hereditaments hereinafter conveyed as beneficial owner, and as to all other (if any) his estate and interest therein, and the said C. D., as to one other undivided moiety of the said hereditaments, as beneficial owner, and as to all other (if any) his estate and interest therein, do hereby convey unto the said E. F., ALL THAT plot of land situate in the parish of —, in the county of —, which plot of land is delineated in the plan drawn on the — skin of these presents, and is therein coloured —: AND ALL THOSE three messuages, lately erected by the said E. F., and now standing on the same plot known by the name of — cottages, and in the several occupations of —, and —, and —: To HOLD the same unto the said

E. F. in fee simple: To THE USE that the said A. B. and C. D. shall have, in fee simple, in equal shares as tenants in common, a perpetual yearly rent-charge of £—, issuing out of the said land, and payable by equal half-yearly payments on the — day of —, and the — day of — in every year, the first half-yearly payment thereof to be made on the — day of — next (s), AND subject to the said rent-charge, and to the statutory powers and remedies for recovering and compelling payment thereof, To THE USE of the said E. F. in fee simple: AND THE SAID E. F. hereby covenants with the said A. B. and C. D., their heirs and assigns, in manner following (that is to say): THAT the said E. F., his heirs or assigns, will pay the said yearly rent-charge at the times hereinbefore appointed for payment thereof: AND ALSO will at all times keep the messuages and buildings hereby conveyed insured against loss or damage by fire, in some well-established insurance office, in a sum equal to two third parts of the value thereof, and will, whenever required, produce to the said A. B. and C. D., their heirs or assigns, the policy of such insurance, and the receipt for the premiums payable thereon for the current year, and in case of damage by fire will rebuild and reinstate the said premises within one year after the damage shall have occurred, and will apply for that purpose all sums of money received under such insurance as aforesaid, and if the sum shall be insufficient will make up the deficiency out of his or their own money: AND ALSO will at all times keep in tenantable repair the said messuages and buildings, and all the drains, fixtures, and conveniences connected therewith: AND THAT it shall be lawful for the said A. B. and C. D., their heirs or assigns, or their agent or surveyor, once in every year in the day time, after one week's previous notice of their intention so to do, to enter upon and view the condition of the said messuages and buildings: AND ALSO that the said E. F., his heirs or assigns, will not without the consent in writing of the said A. B. and C. D., their heirs or assigns, erect upon the said plot of ground hereby conveyed any buildings other than the said messuages and buildings now standing thereon: AND that no wall bounding the said plot of land shall be carried to a greater height than six feet from

GRANT BY
TENANTS IN
COMMON IN
CONSIDERA-
TION OF PER-
PETUAL RENT.

To use that
grantors may
receive in
equal shares
perpetual
rent-charge.

Covenants by
grantee to pay
rent,
to insure
against fire,

to keep in
repair.

Power for
grantors to
enter once a
year.

Not to erect
any other
buildings
without
consent of
grantor.

No wall to be
erected higher
than six feet.

(s) See note, *supra*, p. 353.

GRANT BY
TENANTS IN
COMMON IN
CONSIDERA-
TION OF PER-
PETUAL RENT.

Boundary
walls may be
used as party
walls.

Not to carry
on offensive
trade.

Covenant by
grantors to
indemnify
against para-
mount rent.

the ground floor of the said messuages, and that the boundary walls of the said plot may be used as party walls by any person or persons building on the adjoining plots of ground, he and they paying a proportionate part of the expense of keeping the same in repair: AND ALSO, that the said E. F., his heirs or assigns, will not at any time carry on or permit to be carried on upon the said premises any noisy, noisome, or offensive trade or business (*power to A. B. and C. D., their heirs and assigns, to re-enter on non-payment of rent or breach of covenants, see last Precedent, supra, p. 355*): AND THE SAID A. B. and C. D. hereby covenant with the said E. F., his heirs and assigns, THAT THE SAID A. B. and C. D., their heirs and assigns, will at all times hereafter pay the entirety of a certain yearly rent of £—, reserved by an indenture dated, &c., and made, &c., to which the hereditaments hereby conveyed, together with other property of great value, are liable under the same indenture, and also observe and perform the covenants and conditions in the last-mentioned indenture contained, and will at all times keep indemnified the said E. F., his heirs and assigns, owners for the time being of the premises hereby conveyed, from and against the same rent of £—, covenants and conditions, and all claims and demands on account thereof respectively: AND THAT whenever the said yearly rent of £—, or any portion thereof, shall be in arrear, or shall be paid by the said E. F., his heirs or assigns, or be raised out of the hereditaments hereby conveyed, or out of the rents and profits thereof, by reason of the default of the said A. B. and C. D., their heirs or assigns, to pay the same at the several times at which the same ought to be paid, according to the terms of the said indenture of the — day of —, it shall be lawful for the said E. F., his heirs or assigns, to stop and suspend the payment of the said yearly rent of £—, or of any sums on account thereof, until the said yearly rent of £—, or any payment in respect thereof, shall cease to be so in arrear as aforesaid, or until all such sums as shall be so paid by the said E. F., his heirs or assigns, or shall be so raised as aforesaid, in consequence of such default as aforesaid, and all costs occasioned by any such default, shall be fully satisfied by the said A. B. and C. D., their heirs or assigns.

IN WITNESS, &c.

No. CII.

APPOINTMENT of LAND for BUILDING by TENANT FOR
LIFE under a Power in CONSIDERATION of a perpetual
RENT-CHARGE.

BUILDING
APPOINTMENT
BY TENANT FOR
LIFE UNDER
POWER.

THIS INDENTURE, made the — day of —, BETWEEN Parties.
A. B. of, &c. (*grantor*), of the first part, and C. D. of, &c. (*grantee*),
of the other part: WITNESSETH that the said A. B., as Tenant for life
beneficial owner, by virtue of the power to him for this purpose in exercise of
limited by an indenture of settlement dated the — day of power,
—, and made between, &c., and of every other power enabling
him in this behalf, and in consideration of the perpetual yearly
rent hereinafter limited, and the covenants of the said C. D.
hereinafter contained, hereby appoints that ALL, &c. (*here describe appoints*
the property to be appointed): (EXCEPT and reserved out of this parcels,
present appointment all springs of water issuing, arising, or (except springs
flowing out of, in, through, or upon the said plot of ground of water.)
hereby appointed, or any part thereof, with liberty for the said
A. B. and other the person or persons for the time being entitled
to the said excepted premises under the limitations of the said
indenture of settlement, to enter upon the said hereditaments
and to make and maintain thereupon or therein any reservoirs
and channels for conveying the said water from or through the
same or any part thereof, and from time to time to alter and
repair the same reservoirs and channels, paying to the owner or
owners of the said premises for the time being, for all damage
which may be done to him or them in the exercise of the powers
hereby reserved), shall henceforth go, remain, and be To THE
USES following (that is to say): To THE USE that the said A. B. To use that
and other the person or persons who under the limitations of the grantor and
said indenture of settlement would for the time being be entitled other persons
to the hereditaments and premises hereby appointed, if these entitled under
presents had not been made, may from and after the date of settlement
these presents for ever receive, out of the hereditaments and may receive
premises hereby appointed, the yearly rent-charge of £—, to rent-charge.
be paid by equal half-yearly payments, &c. (t), and subject to

(t) See note, *supra*, p. 353.

**BUILDING
APPOINTMENT
BY TENANT FOR
LIFE UNDER
POWER.**

Covenants by
grantee, and
power of
re-entry.

the said rent-charge, and to the statutory powers and remedies for recovering and compelling payment thereof, To THE USE of the said C. D. in fee simple: AND THE SAID C. D. hereby covenants with the said A. B., and other the person or persons for the time being entitled to the said rent under the limitation aforesaid, that, &c. (*Covenants by grantee and power of re-entry, as in Precedent No. C., mutatis mutandis.*) (*Proviso as to covenants for title when the tenant for life is not the settlor, supra, p. 301.*)

IN WITNESS, &c.

No. CIII.

**GRANT AND
SALE OF A
RENT-CHARGE.**

**GRANT and SALE in FEE of a RENT-CHARGE which is made
PAYABLE out of FREEHOLD Hereditaments (u).**

Parties.

Agreement for
creation and
sale of a
rent-charge.

Vendor grants
yearly
rent-charge
payable out of
specific lands.

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c. (*vendtor*), of the one part, and C. D. of, &c. (*pur-chaser*), of the other part: WHEREAS the said A. B. hath agreed with the said C. D. for the creation and sale to him of the several yearly rent-charges of £—, £—, and £—, intended to be hereby granted, and for securing the payment thereof respectively as hereinafter mentioned, at the price of £—: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B., as beneficial owner, hereby grants unto the said C. D. THE yearly rent-charge next hereinafter mentioned (that is to say): ONE YEARLY RENT-CHARGE of £—, to be issuing and payable out of all that piece of land containing — square yards or thereabouts delineated in the plan drawn in the margin of these presents, and therein coloured red, and out of all that partly-built messuage or tenement now standing on part of the said piece of land, and known as number 1, — Buildings, and out of all other buildings and erections now standing or to be hereafter built upon the same piece

(u) The stamp on this deed will be an *ad valorem* stamp on the sum paid to A. B. by C. D.

of land or any part thereof, which piece of land hereinbefore described is situate in the parish of —, in the city of —, and is bounded, &c., which said yearly rent-charge is to be paid and payable by equal half-yearly payments on the — day of — and the — day of — in every year, and the first of such half-yearly payments is to be made on the — day of — (x): To HOLD the said rent-charge and premises unto and to the use of the said C. D., in fee simple: AND THE SAID A. B. hereby acknowledges the right of the said C. D. to production of the documents mentioned in the schedule hereto, and to delivery of copies thereof, and hereby undertakes for the safe custody thereof.

GRANT AND
SALE OF A
RENT-CHARGE.

To purchaser
in fee.
Vendor gives
acknowledg-
ment and
undertaking.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. CIV.

CONVEYANCE of FREEHOLDS which are SUBJECT to a
perpetual Yearly RENT-CHARGE.

CONVEYANCE
OF FREEHOLDS
SUBJECT TO
PERPETUAL
RENT.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part: WHEREAS by an indenture, dated, &c., and made between G. H., of, &c., of the one part, and the said A. B. of the other part, for the considerations therein mentioned, the plot of ground hereinafter described, and intended to be hereby conveyed, was conveyed by the said G. H. unto the said A. B. in fee simple; To the use that the said G. H. should have in fee simple the yearly rent-charge of £— issuing out of the said hereditaments and premises to be paid as therein mentioned, and subject to the said rent-charge, to the use of the said A. B., in fee simple; and the indenture now in recital contains a covenant by the said A. B. for the payment of the said yearly rent-charge and certain other covenants by him

Parties.

Recite conveyance of land to the vendor in fee subject to a perpetual rent-charge.

(x) See note, *supra*, p. 353.

CONVEYANCE
OF FREEHOLDS
SUBJECT TO
PERPETUAL
RENT.

That vendor
has erected a
dwelling-
house on the
land conveyed
to him.

Agreement
for sale of
hereditaments
subject to the
yearly rent-
charge.

Vendor con-
veys land and
dwelling-
house to pur-
chaser in fee,
subject to
perpetual
rent-charge.

Covenant by
purchaser to
pay rent-
charge and
observe
grantor's
covenants.

as to buildings and otherwise: AND WHEREAS since the date and execution of the said recited indenture, the said A. B., in performance of a covenant in this behalf contained in the said indenture, hath erected a messuage or dwelling-house upon the said plot of ground intended to be hereby assured: AND WHEREAS the said A. B. hath agreed to sell to the said C. D. the plot of ground, messuage or dwelling-house, and hereditaments hereinafter described (subject as hereinafter mentioned), at the price of £—: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £— to the said A. B. paid by the said C. D., on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges), the said A. B., as beneficial owner, hereby conveys unto the said C. D., ALL THAT plot of ground (*parcels*), and all that messuage or dwelling-house which has been erected on the said plot of ground as aforesaid: To HOLD the same (subject to the said yearly rent-charge of £— limited to the said G. H. by the hereinbefore recited indenture and to the covenants of the said A. B. contained in the same indenture) unto and to the use of the said C. D., in fee simple: AND THE SAID C. D. hereby covenants with the said A. B., that the said C. D., his heirs or assigns, will at all times pay the said rent-charge and observe and perform the said covenants and keep indemnified the said A. B., and his estate and effects, from all claims and demands on account thereof.

IN WITNESS, &c.

No. CV.

CONVEYANCE
OF A FEE FARM
RENT.

CONVEYANCE of a PERPETUAL yearly RENT issuing out
of FREEHOLDS.

Parties.

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part (*recite indenture by which certain hereditaments were assured unto G. H. and his heirs, to the use that*

A. B., his heirs and assigns, should receive thereout a yearly rent of £5, and subject thereto to the use of G. H., his heirs and assigns, and that the said indenture contained a covenant by G. H. for payment of the rent-charge and other covenants by him as to buildings and otherwise, supra, pp. 353, 354, 355): AND WHEREAS the said A. B. hath agreed to sell to the said C. D. the said yearly rent-charge of £5, and the benefit of all powers and remedies vested in the said A. B. for securing payment thereof, at the price of £—: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £— to the said A. B. paid by the said C. D. on or before the execution of these presents (the receipt, &c.), the said A. B., as beneficial owner, hereby conveys unto the said C. D. THE SAID yearly rent-charge of £5 limited to the said A. B. in fee simple by the hereinbefore recited indenture, and all powers, remedies, and means whatsoever vested in the said A. B. by virtue of the said indenture or otherwise for enforcing and obtaining payment thereof (including the benefit of the covenants to repair and insure against fire and the proviso for re-entry contained in the said indenture if and so far as the said A. B. can convey the same) (y): To HOLD the same unto and to the use of the said C. D. in fee simple.

CONVEYANCE
OF A FEE FARM
RENT.

Agreement for
sale.

Conveyance
by vendor of
perpetual rent,

to purchaser
in fee.

IN WITNESS, &c.

No. CVI.

CONVEYANCE of Land by MORTGAGEE and MORTGAGOR
in consideration of perpetual RENT-CHARGE, which is
LIMITED to the MORTGAGEE.

CONVEYANCE
IN CONSIDERA-
TION OF FEE
FARM RENT BY
MORTGAGEE
AND
MORTGAGOR.

THIS INDENTURE, made the — day of —, BETWEEN
A. B. of, &c. (*mortgagee*), mortgagee in fee of the hereditaments
hereinafter described under an indenture dated the — day of
—, of the first part, C. D. of, &c. (*mortgagor*), owner in fee of
the said hereditaments subject to the said mortgage, of the

Parties.

(y) *Supra*, pp. 354, 355, notes (p), (q).

CONVEYANCE
IN CONSIDERA-
TION OF FEE
FARM RENT BY
MORTGAGEE
AND
MORTGAGOR.

Conveyance
by mortgagee
and mortgagor
of parcels to
purchaser, to
use that mort-
gagee may
receive rent-
charge, &c.,
and subject
thereto to pur-
chaser in fee.

Declaration
that provisions
in mortgage
shall apply to
rent.

second part, and E. F. of, &c. (*purchaser*), of the third part: WITNESSETH, that in consideration of the rent hereinafter limited, and of the covenants of the said E. F. hereinafter contained, the said A. B., as mortgagee, at the request of the said C. D., hereby conveys, and the said C. D., as beneficial owner hereby conveys and confirms unto the said E. F.: ALL, &c. (*parcels, &c.*): To HOLD the same unto the said E. F. in fee simple (*To the use that A. B. shall receive rent-charge, supra, p. 353*), and subject as aforesaid to the use of the said E. F., in fee simple. (*Grantee's covenants as in Precedent No. C., supra, pp. 354, 355, except that they will be entered into with A. B. Power to A. B., his heirs or assigns, to re-enter, in case rent or grantee's covenants shall not be paid and observed, supra, p. 355.*) AND IT IS HEREBY DECLARED, that the rent, powers, and benefits hereby limited and granted to the said A. B., as aforesaid, shall be subject to such and the like right or equity of redemption, powers, and provisions as the hereditaments hereby conveyed to the said E. F. as aforesaid were subject to, under, or by virtue of the said indenture of mortgage immediately before the execution of these presents.

IN WITNESS, &c.

No. CVII.

CONVEYANCE
SUBJECT TO
PROPORTION
OF RENT-
CHARGE.

CONVEYANCE of ONE of several DWELLING-HOUSES
subject to a PROPORTIONATE PART of a perpetual RENT-
CHARGE reserved in respect of ALL the HOUSES by the
ORIGINAL GRANT.

Parties.

Recite original
conveyance
reserving per-
petual rent.
That grantee
has erected
four houses.

Agreement for

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c. (*vendtor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: (*Recite conveyance of land to A. B. in fee, subject to perpetual rent-charge of £4, payable to C. D. in fee*): AND WHEREAS pursuant to a covenant for that purpose contained in the hereinbefore recited indenture, the said A. B. hath erected and completed four dwelling-houses on the piece of land thereby conveyed, or on some part thereof: AND WHEREAS the said

A. B. hath agreed to sell to the said C. D. the dwelling-house and hereditaments hereinafter described (being one of the four dwelling-houses so built and completed as aforesaid), free from all incumbrances, except the payment of the yearly sum of £1, part of the said yearly rent-charge of £4 reserved by the hereinafore recited indenture, at the price of £100 : AND WHEREAS the said A. B. and C. D. have agreed to enter into the mutual covenants hereinafter contained relative to the payment of their respective proportions of the said rent-charge of £4 : NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £100 to the said A. B. paid by the said C. D. on or before the execution of these presents (*the receipt, &c.*), the said A. B., as beneficial owner, hereby conveys unto the said C. D., ALL THAT messuage or dwelling-house situate and being, &c., and the buildings and garden adjoining or belonging to the said messuage or dwelling-house, including the use, in common with the other persons or person who may be entitled to the same, of the pump situate, &c., and of the drains appertaining to or connected with the said messuage or dwelling-house, and also including all other liberties granted by the said recited indenture of the — day of —, so far as the same do or can in any respect relate to the hereditaments hereby conveyed : To HOLD the same unto and to the use of the said C. D., in fee simple, subject to the payment of the yearly sum of £1 (part of the said yearly rent-charge of £4), and to the observance and performance of the covenants and conditions contained in the said recited indenture so far as the same relate to the said yearly sum of £1, and to the said premises hereby conveyed (*Acknowledgment by A. B. of right of C. D. to production of recited indenture, and undertaking for its safe custody*) : AND THE said A. B. hereby covenants with the said C. D. that the said yearly rent-charge of £4 has been duly paid and satisfied up to the — day of —, now last past, and that the covenants and conditions contained in the said recited indenture, and on the part of the grantee, his heirs or assigns, to be observed and performed, have been duly performed up to the date of these presents : AND THAT the said A. B., his heirs or assigns, will at all times hereafter pay the said yearly rent-charge of £4, reserved by the said recited indenture (except the said yearly sum of £1, being the part of the said yearly rent-charge which is made payable by

CONVEYANCE
SUBJECT TO
PROPORTION
OF RENT-
CHARGE.

sale of one of
such houses,
subject to pro-
portion of
rent-charge.

Witnessing
part.

Vendor
conveys
parcels

to purchaser in
fee, subject to
proportionate
part of rent-
charge, and to
covenants in
original grant
applicable to
house pur-
chased.

Covenants by
vendor that
rent and cove-
nants have
been paid and
performed,

to pay his
proportion
of rent,

CONVEYANCE
SUBJECT TO
PROPORTION
OF RENT-
CHARGE.

and observe
covenants
applicable to
houses not
sold,
and to indem-
nify purchaser
therefrom.

Power to
purchaser to
distrain and
enter for rent
payable in
respect of
houses not
sold.

these presents in respect of the hereditaments hereby conveyed), and also will at all times observe and perform all the covenants and conditions in the said recited indenture contained and on the part of the said A. B., his heirs or assigns, to be observed and performed, so far as the same relate to such part of the premises comprised in the said recited indenture as are not hereby conveyed, and will at all times keep indemnified the said C. D., his heirs and assigns, from and against the payment of the said yearly rent-charge of £4 (except such part thereof as aforesaid), and the said covenants and conditions, so far as the same relate to such part of the said premises comprised in the said recited indenture as aforesaid as are not hereby conveyed, and also from and against all claims and demands whatsoever, by reason of the non-payment of the said yearly rent-charge (except as aforesaid), or the non-observance or non-performance of such covenants and conditions, or any of them : AND FURTHER, that in case the hereditaments and premises hereby conveyed, or any part thereof, shall at any time or times hereafter be distrained upon, or in case any other proceedings shall at any time or times hereafter be taken against or with reference to the same hereditaments and premises, or any part thereof, or against the said C. D., his heirs or assigns, for the payment of the said yearly rent-charge of £4 (except such proportion thereof as is made payable by these presents in respect of the hereditaments hereby conveyed as aforesaid), or any part thereof, or any sum or sums of money on account thereof, or on account of the covenants and conditions hereinbefore covenanted to be observed and performed by the said A. B., his heirs or assigns, or any of them, or the non-observance thereof, or if the said C. D., his heirs or assigns, shall at any time or times hereafter, pay the said yearly rent-charge of £4 (except such part thereof as aforesaid), or any part thereof, or any sum or sums of money on account thereof, or on account of the last-mentioned covenants and conditions, or any of them, or if he or they shall at any time or times hereafter be put to, bear, or sustain, any costs, loss, or damage, on account of the non-observance of such covenants and conditions, or any of them, then and in every such case it shall be lawful for the said C. D., his heirs or assigns, into and upon all or any part of such portion of the premises comprised in the said recited indenture as is not hereby

conveyed, to enter and distrain for all such moneys, costs, loss, or damage, as the said C. D., his heirs or assigns, or the hereditaments and premises hereby conveyed, shall so pay, bear, or sustain by reason of any such distresses, proceedings, costs, loss, or damage, and to dispose of the distresses then and there found according to law, as landlords may for rent reserved upon leases for years, to the intent that thereby the said C. D., his heirs or assigns, may be fully paid and satisfied all such moneys, costs, damages, and expenses as aforesaid: AND THAT IN CASE and so often as aforesaid, it shall be lawful for the said C. D., his heirs or assigns, to enter into and upon and to hold all or any part of such portion of the premises comprised in the said recited indenture as is not hereby conveyed, and to receive the rents and profits thereof until he or they shall be fully paid all such moneys, costs, damages, and expenses as aforesaid: AND THE SAID C. D. hereby covenants with the said A. B., THAT the said C. D., his heirs or assigns, will at all times hereafter pay the said yearly sum of £1 (being the proportion of the aforesaid rent-charge hereby made payable in respect of the hereditaments hereby conveyed), and will at all times observe and perform all and singular the covenants and conditions in the said recited indenture contained, which henceforth, on the part of the said C. D., his heirs or assigns, ought to be observed and performed in respect of the premises hereby conveyed, and will at all times hereafter keep indemnified the said A. B., his heirs and assigns, from and against the payment of the said yearly sum of £1, and the said covenants and conditions relating to such portion of the said premises as is hereby conveyed, and from and against all claims and demands whatsoever by reason of the non-payment of the said yearly sum of £1, or the non-observance or non-performance of the last-mentioned covenants and conditions, or any of them: AND FURTHER, that in case any part of the hereditaments and premises comprised in the said recited indenture, and not hereby conveyed, shall at any time or times hereafter be distrained upon, or in case any other proceedings shall at any time or times hereafter be taken against or with reference to the same hereditaments and premises, or any part thereof, or against the said A. B., his heirs or assigns, for the payment of the said yearly sum of £1, or any part thereof, or any sum or sums of money on account thereof, or on

CONVEYANCE
SUBJECT TO
PROPORTION
OF RENT-
CHARGE.

Covenants by purchaser, to pay his proportion of rent and observe covenants applicable to purchased property, and to indemnify vendor therefrom.

Power to vendor to distrain and enter for rent payable in respect of purchased property.

CONVEYANCE
SUBJECT TO
PROPORTION
OF RENT-
CHARGE.

account of the covenants and conditions hereinbefore covenanted to be observed and performed by the said C. D., his heirs or assigns, or the non-observance thereof, or if the said A. B., his heirs or assigns, shall at any time or times hereafter pay the said yearly sum of £1, or any part thereof, or any sum or sums of money on account thereof, or on account of the last-mentioned covenants and conditions, or any of them, or if he or they shall at any time or times hereafter be put to, bear, or sustain any costs, loss, or damage on account of the non-observance of such last-mentioned covenants and conditions, or any of them, then and in every such case it shall be lawful for the said A. B., his heirs or assigns, into and upon all or any part of the premises hereby conveyed, to enter and distrain for all such moneys, costs, loss, or damage, and to dispose of the distresses then and there found according to law, as landlords may for rent reserved upon leases for years, to the intent that thereby the said A. B., his heirs or assigns, may be fully paid and satisfied all such moneys, costs, damages, and expenses as aforesaid; AND THAT IN CASE and so often as aforesaid it shall be lawful for the said A. B., his heirs or assigns, to enter into and upon, and to hold all or any part of the premises hereby conveyed, and to receive the rents and profits thereof until he or they shall be fully paid all such moneys, costs, damages and expenses as aforesaid.

IN WITNESS, &c.

No. CVIII.

MUTUAL COVE-
NANTS AND
POWERS TO
SECURE PAY-
MENT OF PRO-
PORTIONATE
PART OF RENT-
CHARGE.

DEED containing MUTUAL COVENANTS and MUTUAL POWERS of DISTRESS and ENTRY by several PURCHASERS for INDEMNIFYING each of them against the PAYMENT of more than his PROPORTIONATE PART of a YEARLY RENT which is CHARGED on ALL the LANDS.

Parties.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*one of the four purchasers*), of the first part, C. D., of, &c. (*another of the four purchasers*), of the second part, E. F.,

of, &c. (*another of the four purchasers*), of the third part, and G. H., of, &c. (*the other of the four purchasers*), of the fourth part: (*Recite indenture whereby a piece of land situate, &c., and therein particularly described, was granted by L. M. to N. O., his heirs and assigns, reserving a yearly rent-charge of £5 to L. M., his heirs and assigns, and subject to the covenant that N. O. should build four messuages or dwelling-houses on the said piece of land within a given time and according to a plan, &c.*) AND WHEREAS, pursuant to the covenant in that behalf contained in the said recited indenture as aforesaid, the said N. O. erected four messuages or dwelling-houses on the said piece of land comprised in the said indenture: AND WHEREAS the said N. O. has lately sold and conveyed the said several messuages and premises to the several persons parties hereto at and under apportioned parts of the said yearly rent of £5, and subject to the covenants and conditions contained in the said recited indenture, and on the grantee's part to be observed and performed so far as the same relate to the said premises respectively: AND WHEREAS the short particulars of the several premises so respectively sold and conveyed to the several persons parties hereto as aforesaid, the dates of their respective conveyances and the amount of the apportioned yearly rents reserved thereby respectively are respectively set forth opposite to the names of the several persons parties hereto in the schedule hereunder written: AND WHEREAS upon the treaty for the aforesaid sales it was agreed that the several persons parties hereto should enter into such mutual covenants and grant such mutual powers of distress and entry as are hereinafter contained: NOW THIS INDENTURE WITNESSETH, that in pursuance of the aforesaid agreement, and in consideration of the premises, each of them the said several persons parties hereto hereby covenants with the others of them in manner following, that is to say, THAT each of the several persons parties hereto, his heirs and assigns, will henceforth for and in respect of the premises conveyed to him as aforesaid, pay the apportioned yearly rent set opposite to his name in the fourth column of the schedule hereunder written, and duly observe and perform the covenants contained in the said recited indenture of the — day of — and on the grantee's part to be observed and performed so far as the same relate to the last-mentioned premises, and will at all times hereafter keep indemnified the other parties

MUTUAL COVENANTS AND POWERS TO SECURE PAYMENT OF PROPORTIONATE PART OF RENT-CHARGE.

That four houses have been built on land pursuant to covenant.

Sale of the messuages at apportioned parts of the rent and covenants.

Particulars of premises, dates of conveyances, and amount of apportioned rents contained in schedule.

On the treaty for sale, agreement that purchasers should enter into mutual covenants and grant mutual powers of distress and entry.

Each of the purchasers covenants with the others that he will pay apportioned rent set opposite his name in schedule, and observe covenants that relate to premises conveyed to him, and that he will indemnify the others against such appor-

MUTUAL COVE-
NANTS AND
POWERS TO
SECURE PAY-
MENT OF PRO-
PORTIONATE
PART OF RENT-
CHARGE.

tioned rent and
covenants, and
that the other
parties shall
be at liberty to
enter and dis-
train on pre-
mises conveyed
to him in
respect of any
loss arising
from default
by him.

hereto, and their respective heirs and assigns, and every of them, from and against all actions, proceedings, claims, and demands whatsoever, for or by reason or on account of the non-payment of the said apportioned rent, or any part thereof, or any breach of the said covenants so far as the same relate to the last-mentioned premises: AND FURTHER, that if any of the parties hereto, his heirs or assigns, shall at any time or times hereafter be required to pay more than his or their due proportion of the said yearly rent of £5, and shall pay the same accordingly, or shall sustain or incur any costs, charges, damages, or expenses whatsoever, for or by reason or on account of any default by any other of the parties hereto, his heirs or assigns, in the payment of the rent or in the observance or performance of the covenants which he or they ought to pay, observe, or perform under the covenants hereinbefore contained, then and so often as the same shall happen, it shall be lawful for the person or persons making such payment or sustaining or incurring such costs, charges, damages, or expenses as aforesaid, into and upon all or any part of the premises mentioned in the schedule hereto set opposite to the name of the person who or whose heirs or assigns shall have made such default as aforesaid, to enter and distrain for such excess of rent, costs, charges, damages, or expenses as aforesaid, and to dispose of the distress or distresses then and there found according to law as landlords may upon rents reserved upon leases for years, to the intent that he and they may be thereby fully repaid and satisfied all such excess of rent, costs, charges, damages, and expenses aforesaid, and also (if he or they shall think fit so to do) to enter into or upon all or any part of the last-mentioned premises, and to remain in possession thereof, and receive the rents and profits thereof until he or they shall be fully repaid and satisfied all such excess of rent, costs, charges, damages, and expenses as aforesaid.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. CIX.

CONVEYANCE of FREEHOLD LAND, *reserving the MINERALS to the VENDOR, with POWERS for working the same (a).*

CONVEYANCE
OF FREEHOLDS,
RESERVING
MINERALS.

THIS INDENTURE, made the — day of —, BETWEEN Parties.

A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: WHEREAS the said A. B. hath agreed to sell to the said C. D. the lands and hereditaments hereinafter described, with such exceptions and reservations as are hereinafter expressed, at the price of £—: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt*,

Agreement for
sale of land,
reserving
minerals.
Witnessing
part.

(a) An exception of the mines under land is *prima facie* an exception of the strata in which the minerals are, and leaves the grantor in the ownership of such strata as a separate tenement and not as a mere servitude or easement. He may therefore use them for any purpose he thinks fit, *e.g.*, he may make a road through them for the conveyance of the produce of adjoining mines. (*Duke of Hamilton v. Graham*, L. R. 2 H. L. 166.) But it is a question of construction whether the strata or the minerals only are reserved, and in the latter case the grantor has the right of getting the minerals only. (*Ramsay v. Blair*, L. R. 1 App. Ca. 701.)

Exception of
minerals.

Where the ownership of the mines is separate from that of the surface, *prima facie* the mine owner is bound to leave sufficient support for the surface, and a grant or reservation of express power to work and get the minerals, and for that purpose to sink shafts, &c., making compensation for damage to the surface, does not of itself relieve the mine owner from the obligation to support the surface; because sufficient effect may be given to the compensation clause by holding it to apply to damage caused by the sinking of the shafts, and other surface works authorized by the deed. (*Humphries v. Brogden*, 12 Q. B. 739; 20 L. J. Q. B. 10; *Harris v. Ryding*, 5 M. & W. 60; 8 L. J. (N. S.) Exch. 181; *Smart v. Morton*, 24 L. J. Q. B. 260; *Roberts v. Haines*, 25 L. J. Q. B. 353; *Hext v. Gill*, L. R. 7 Ch. 699.) But if it appears clearly on the face of the instrument that the grant of the mines is intended to carry with it the right so to work them as to cause a subsidence, there is nothing illegal in such a grant, and it is in every case a question of construction whether this is or is not the intention of the deed. (*Rowbotham v. Wilson*, 27 L. J. Q. B. 61; 8 H. L. O. 348; *Duke of Buccleuch v. Wakefield*, L. R. 4 H. L. 377.) Thus, in a case where, on a grant of land for the erection of a cotton mill, there was an exception and reservation of all the mines and minerals, with power to take the same at pleasure, but without entering upon the surface, so that compensation be made for all damage to the buildings by the exercise of any of the excepted powers, it was held that the mine owner might work so as to injure the buildings, because as he was restrained from entering on the surface, the damage contemplated by the compensation clause must be damage by subsidence. (*Aspden v. Siddon*, L. R. 10 Ch. 394.)

Right of
owner of sur-
face to support
from the sub-
jacent mines.

CONVEYANCE
OF FREEHOLDS,
RESERVING
MINERALS.

Vendor con-
veys parcels.

Exception and
reservation of
mines and
minerals,

and liberty of
ingress, &c.,

and liberty to
sink pits

and to appro-
priate surface
for heap room.

Vendor to pay
rent for sur-
face appro-
priated,

and workings
to be con-
ducted so as
not to en-
danger
buildings, &c.

&c.), the said A. B., as beneficial owner, hereby conveys unto the said C. D. ALL, &c. (*parcels*) (except and reserved as hereinafter is mentioned) To HOLD the same unto and to the use of the said C. D., in fee simple: AND IT IS DECLARED that there shall be excepted and reserved unto the said A. B., in fee simple, out of the conveyance hereby made, all mines, veins, seams, and beds of coal, ironstone, and other minerals whatsoever already found or which may hereafter be found under the lands hereby conveyed, with full liberty of ingress, egress, and regress at all times for the said A. B., his heirs or assigns, and his or their servants, agents, and workmen, into and upon the said lands, and either with or without horses and other cattle, carts and waggons and other carriages, for the purpose of searching for, working, getting, and carrying away the said mines and minerals, and with full liberty also for the said A. B., his heirs or assigns, to sink, drive, make, and use pits, shafts, drifts, adits, aircourses, and watercourses, and to erect and set up fire and other engines, machinery, and works, and to lay down railroads and other roads in, upon, under, and over the said lands, or any of them, for the purpose of more conveniently working and carrying away the said mines and minerals, and also to appropriate and use any part of the surface of the said lands for depositing, placing, and heaping thereon the minerals, waste, rubbish, and other substances which may be gotten from the said mines, and generally to do all other acts and things necessary or proper for working and getting the said mines and minerals according to the most approved practice of mining in the district: PROVIDED ALWAYS, that the said A. B., his heirs or assigns, shall pay to the said C. D., his heirs or assigns, the annual sum of £—— for every acre, and so in proportion for any less quantity than an acre of land, the surface whereof shall be appropriated or used for any of the purposes aforesaid, so long as such appropriation or use shall continue, and until the surface shall be restored, as nearly as may be practicable, to its original state and condition before such appropriation or use commenced: PROVIDED ALSO that the workings of the said mines shall be conducted in such a manner as not to endanger any buildings now being on the said lands, or which may be hereafter erected on the site of or within —— yards of the site of any present buildings, and generally to do as little damage or

injury to the surface of the said lands as shall be consistent with the proper working of the said mines: PROVIDED ALSO, that the said A. B., his heirs or assigns, shall pay to the said C. D., his heirs or assigns, adequate compensation for all damage or injury which he or they, or his or their tenants, may sustain by reason of the working of the said mines, or the exercise of any of the liberties or privileges hereby excepted and reserved, the amount of such compensation, and all other matters in difference which may arise between the parties in connection with the said excepted mines, minerals, liberties, and privileges, to be settled by two arbitrators, one to be appointed by each party in difference, or their umpire, subject to the provisions as to arbitration contained in the "Common Law Procedure Act, 1854," and every submission to reference under this clause shall be made a rule of the High Court of Justice.

IN WITNESS, &c.

CONVEYANCE
OF FREEHOLDS,
RESERVING
MINERALS.

Vendor to pay
compensation
for damage.

No. CX.

CONVEYANCE of MINES *without the SURFACE, the MINES*
to be WORKED through the ADJOINING PROPERTY.

CONVEYANCE
OF MINES
WITHOUT SUR-
FACE.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part: WHEREAS the said A. B. hath agreed to sell to the said C. D. the mines and minerals hereinafter described at the price of £—: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B., as beneficial owner, hereby conveys unto the said C. D., ALL the mines and minerals whatsoever in or under the pieces of land situate in the parish of —, in the county of —, which are specified in the schedule hereunder written, and are delineated and coloured pink in the map hereunto annexed, but so that the said mines and minerals shall and may be worked, gotten, and carried away by means of outstroke or underground workings, through any adjoining mines or lands

Parties.

Agreement for
sale.

Witnessing
part.

Vendor con-
veys mines and
minerals;

to be worked
by under-
ground work-
ings only,

**CONVEYANCE
OF MINES
WITHOUT
SURFACE.**

surface not to be entered on or interfered with, and purchaser to pay compensation for damage.

Habendum to purchaser in fee.

belonging to or held by the said C. D., his heirs or assigns, or which he or they may for the time being be authorized to use for that purpose, and that the surface of the said lands specified in the schedule hereunder written, or any of them, shall not be entered upon or in any manner interfered with for any of the purposes aforesaid, or for any purpose connected with the said mines and minerals, and so also that the said C. D., his heirs or assigns, shall do no damage or injury to the surface of the said lands in or about the working and getting of the said mines and minerals, or in anywise relating thereto: To HOLD the said mines and premises hereby conveyed, unto and to the use of the said C. D., in fee simple.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. CXI.

**CONVEYANCE
TO SUB-
PURCHASER
WHO PAYS
SAME SUM.**

Parties.

Recite agreements for sale and sub-sale.

CONVEYANCE to a SUB-PURCHASER who PAYS the SAME SUM as the ORIGINAL PURCHASER (a).

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*vendor*), of the first part, C. D., of, &c. (*original purchaser*), of the second part, and E. F. (*sub-purchaser*), of the third part. WHEREAS the said A. B. lately agreed to sell to the said C. D. the hereditaments hereinafter described, and the inheritance thereof in fee simple in possession free from incumbrances, at the price of £1000. AND WHEREAS the said C. D. has agreed to sell to the said E. F. the same hereditaments at the price of £1000. NOW THIS INDENTURE WITNESSETH that in consideration of the sum of £1000 to the said

(a) The stamp will be an *ad valorem* on £1,000. (See 33 & 34 Vict. c. 97, s. 74 (3).)

A. B., paid by the said E. F. at the request of the said C. D. on or before the execution of these presents (the receipt whereof the said A. B. and C. D. hereby respectively acknowledge) the said A. B., as beneficial owner, at the request of the said C. D., hereby conveys and the said C. D. hereby confirms unto the said E. F. (*conveyance of freeholds to E. F. in fee simple, supra*, p. 225).

IN WITNESS, &c.

CONVEYANCE
TO SUB-
PURCHASER
WHO PAYS
SAME SUM.

Original
vendor, at
request of
original pur-
chaser, con-
veys to sub-
purchaser in
fee simple.

CXII.

CONVEYANCE to a SUB-PURCHASER, who pays a HIGHER PRICE than the ORIGINAL PURCHASER (b).

CONVEYANCE
TO SUB-
PURCHASER AT
HIGHER PRICE.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*vendor*), of the first part, C. D., of, &c. (*original purchaser*), of the second part, and E. F., of, &c. (*sub-purchaser*), of the third part: WHEREAS the said A. B. lately agreed, &c. (*agreement for sale by A. B. to C. D. for £1000*): AND WHEREAS the said C. D. has since agreed to sell to the said E. F. the same hereditaments at the price of £1050: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £1000 to the said A. B. and the sum of £50 to the said C. D. paid by the said E. F. on or before the execution of these presents (the receipt whereof respectively the said A. B. and C. D. hereby acknowledge), THE SAID A. B., as beneficial owner, at the request of the said C. D. hereby conveys, and the said C. D. hereby confirms unto the said E. F., &c. (*Conveyance of freeholds to E. F. in fee simple, p. 225.*)

Parties.

Original
agreement
for sale.

Agreement
between pur-
chaser and
sub-purchaser.

Witnessing
part.

Conveyance
by vendor
and original
purchaser.

IN WITNESS, &c.

(b) The stamp will be an *ad valorem* on the £1,050. (See 33 & 34 Vict. c. 97, s. 74 (3).)

CXIII.

CONVEYANCE
TO SUB-
PURCHASER
AT LESS SUM.

CONVEYANCE to a SUB-PURCHASER who pays a LESS
SUM than the ORIGINAL PURCHASER (a).

Considera-
tions.

Conveyance.

THIS INDENTURE, &c. (*date, parties, and recitals, the same as in the last Precedent, substituting £950 for £1050*): NOW THIS INDENTURE WITNESSETH that in consideration of the sum of £950 by the said E. F. and the sum of £50 by the said C. D. paid to the said A. B. on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges), the said A. B., &c. (*conveyance by A. B. and confirmation by C. D. as in last Precedent*).

IN WITNESS, &c.

CXIV.

CONVEYANCE
UNDER DECREE
OR ORDER IN
ADMINISTRA-
TION SUIT.

CONVEYANCE by TRUSTEES and EXECUTORS of FREE-
HOLD PROPERTY under a DECREE or ORDER in an
ADMINISTRATION SUIT (b).

Parties.

Will of X. Y.,
devising all his
real estate to
trustees.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c., and C. D., of, &c. (*vendors*), of the one part, and E. F., of (*purchaser*), of the other part: WHEREAS X. Y., late of, &c., being seised in fee simple of the hereditaments intended to be hereby conveyed, made his will, dated, &c., and thereby devised all his lands, tenements, and hereditaments,

Stamp.

(a) The stamp will be an *ad valorem* on the £950. (See 33 & 34 Vict. c. 97, s. 74 (3).)

Proper parties
on sale under
decree.

(b) On a sale under a decree of the Court, all persons having a *legal* interest in the property, whether parties to the suit or not, should concur in the conveyance, but the purchaser is not entitled to the concurrence of any persons being parties to the suit, or otherwise bound by the proceedings therein, whose interests are merely equitable. (Dart, V. & P. 770; *Keatinge v. Keatinge*, 6 Ir. Eq. 43; *Cole v. Sewell*, 17 Sim. 40; *Re Williams' Estate*, 5 De G. & Sm. 515.)

and other real estate, unto and to the use of the said A. B. and C. D., their heirs and assigns, upon the trusts therein declared concerning the same, and the said testator appointed the said A. B. and C. D. the executors of his said will: AND WHEREAS the said testator died on the — day of — without having altered or revoked his said will, and the same was shortly afterwards duly proved by the said executors thereof in the principal Probate Registry of the High Court of Justice: AND WHEREAS by an order of the High Court of Justice (Chancery Division), dated the — day of —, and made in the matter of the estate of X. Y. deceased, and in a cause where M. N. claiming to be a creditor of the said X. Y., deceased, was plaintiff, and the said A. B. and C. D. were defendants, it was (amongst other things) ordered that the real estate of the said testator be sold: AND WHEREAS in pursuance of the said decree the real estate of the said testator was, on the — day of — last, with the approbation of the judge to whose court the said cause was attached, put up for sale by public auction in several lots, and the hereditaments intended to be hereby conveyed constituted Lot No. 2 at the said sale: AND WHEREAS by the conditions of the said sale it was provided that each purchaser should at the time of the sale pay a deposit of £5 per cent. on the amount of his purchase-money to O. P., the person appointed by the said judge to receive the same: And it was also provided that each purchaser was, in addition to the amount of his bidding at the sale, to pay the value of all timber and timber-like trees, tellers, and pollards (if any), on the lot purchased by him, down to 1s. per stick inclusive, the amount thereof to be ascertained by valuation as therein mentioned: and also that each purchaser was, under an order for that purpose to be obtained by him, to pay the amount of his purchase-money after deducting the amount paid as a deposit, together with the amount of the aforesaid valuation, into Court, to the credit of the said cause, on or before the — day of — then next, and if the same should not be so paid, then the purchaser was to pay interest on his purchase-money, including the amount of such valuation, at the rate of £5 per cent. per annum, from the said — day of — next to the day on which the same should be actually paid: AND WHEREAS

CONVEYANCE
UNDER DECREE
OR ORDER IN
ADMINISTRA-
TION SUIT.

Order of Court
for sale.

That property
was put up for
sale.

That purchaser
was declared

CONVEYANCE
UNDER DECREE
OR ORDER IN
ADMINISTRA-
TION SUIT.

the highest
bidder, and
paid deposit.
Chief clerk's
certificate of
result of sale.

Valuation of
timber.

Order for
payment of
purchase-
money into
Court.

Payment of
purchase-
money into
Court.

Witnessing
part.

at the said sale the said E. F. was the highest bidder for and and was declared the purchaser of the said Lot 2 at the sum of £2,000, and he thereupon paid to the said O. P. the sum of £100 as a deposit, pursuant to the said condition in that behalf, which deposit has been since paid by the said O. P. into Court to the credit of the said cause: AND WHEREAS the chief clerk of the said judge certified the result of the said sale by his certificate, dated the — day of —, and the said certificate was approved and signed by the said judge on the — day of —, and has been since duly filed in the said Court: AND WHEREAS the timber, timber-like trees, tellers, and pollards on the said lot have been valued pursuant to the said condition in that behalf at the sum of £150: AND WHEREAS, by an order of the said Court, dated the — day of —, and made in the said cause, it was ordered that the said E. F. should, on or before the — day of —, pay the sum of £1,900 (being the balance of the said purchase-money of £2,000 after deducting the said deposit), and the said sum of £150, being the amount of the said valuation, together with interest after the rate of £5 per cent. per annum on the said sums from the said — day of —, the day appointed in the said conditions for the completion of the purchase, to the day on which the same should be actually paid (the amount of such interest to be certified by the chief clerk) into Court to the credit of the said cause, to an account to be entitled "The proceeds of the sale of the real estates of X. Y., deceased," and that all proper parties should join in the sale and conveyance of the said hereditaments to the said E. F.: AND WHEREAS, in pursuance of the said last recited order, the said E. F. did, on the — day of —, pay the said sums of £1,900 and £150, and also the sum of £10, the amount certified to be due for interest thereon from the said — day of — last up to the said day of payment (making together the sum of £2,060), into Court to the credit of the said cause, to an account entitled "The account of the proceeds of the sale of the real estates of X. Y., deceased," as appears by the receipt of one of the cashiers of the Bank of England: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said order, and for the purpose of carrying into effect the said sale, and in consideration of the said sums of £100

and £2,060, paid by the said E. F. as hereinbefore is mentioned, the said A. B. and C. D., as trustees, hereby convey, &c. (*Conveyance to E. F. in fee simple, supra, p. 225.*)

IN WITNESS, &c.

CONVEYANCE
UNDER DECREE
OR ORDER IN
ADMINISTRA-
TION SUIT.

Trustees con-
vey parcels to
purchaser in
fee.

No. CXV.

CONVEYANCE on a SALE made under THE SETTLED
ESTATES ACT, 1877 (40 & 41 Vict. c. 18) (a).

CONVEYANCE
ON SALE UNDER
SETTLED
ESTATES ACT.

THIS INDENTURE, made the — day of —, BETWEEN
A. B., of, &c. (*tenant for life under will*), of the one part, and

Parties.

(a) This Act declares that the word "settlement" as used therein shall signify any Act of Parliament, deed, agreement, copy of court roll, will, or other instrument, or any number of such instruments, under or by virtue of which any hereditaments of any tenure or any estates or interests in any such hereditaments stand limited to or in trust for any persons by way of succession, including any such instruments, affecting the estates of any one or more of such persons exclusively. The Act then declares that the term "settled estates" as used therein, shall signify any hereditaments of any tenure, and all estates or interests in any such hereditaments which are the subject of a settlement, and that for the purposes of the Act a tenant in tail, after possibility of issue extinct, shall be deemed a tenant for life; and that all estates or interests in remainder or reversion not disposed of by the settlement, and reverting to a settlor or descending to the heir of a testator, shall be deemed to be estates coming to such settlor or heir under or by virtue of the settlement; and that in determining what are settled estates within the meaning of the Act, the Court shall be governed by the state of facts, and by the trusts or limitations of the settlements at the time of the said settlement taking effect. (Sect. 2.)

Provisions of
Settled Estates
Act as to sales.

The 16th section enables the Court to authorize a sale of the whole or any parts of any settled estates, or of any timber (not being ornamental timber), growing on any settled estates, such sale to be conducted and confirmed in the same manner as by the rules and practice of the Court for the time being is or shall be required in the sale of lands sold under a decree of the Court. The 18th section empowers the Court, when any land is sold for building purposes, to allow the whole or any part of the consideration to be a rent issuing out of such land, which may be secured and settled in such manner as the Court approves. On any sale of land any earth, coal, stone, or mineral may be excepted, and any rights or privileges may be reserved, and the purchaser may be required to enter into any covenant or submit to any restrictions which the Court may deem advisable. (Sect. 19.) The 20th section makes it lawful for the Court to direct that any part of the settled estates be laid out for streets, roads, paths, squares, gardens, and other open spaces, sewers, drains, or water-courses. And the 22nd section provides that, on every sale or dedication

CONVEYANCE
ON SALE UNDER
SETTLED
ESTATES ACT.

C. D., of, &c. (*purchaser*), of the other part: WHEREAS X. Y., late of, &c., being seised in fee simple of the farms and lands

under the Act, the Court may direct what person or persons shall execute the deed of conveyance, and that such conveyance shall take effect as a revocation or appointment of use or otherwise as the Court may direct.

Applications to the Court must be made with the concurrence or consent of the following parties, namely:—Where there is a tenant in tail under the settlement in existence and of full age, then the parties to concur or consent shall be such tenant in tail, or if there is more than one such tenant in tail, then the first of such tenants in tail and all persons in existence having any beneficial estate or interest under or by virtue of the settlement prior to the estate of such tenant in tail, and all trustees having any estate or interest on behalf of any unborn child prior to the estate of such tenant in tail; and in every other case the parties to concur or consent shall be all the persons in existence having any beneficial estate or interest under or by virtue of the settlement, and also all trustees having any estate or interest on behalf of any unborn child; subject, however, to the proviso, that where an infant is tenant in tail under the settlement, it shall be lawful for the Court, if it shall think fit, to dispense with the concurrence or consent of the person if only one, or all or any of the persons, if more than one, entitled, whether beneficially or otherwise, to any estate or interest subsequent to the estate tail of such infant. (Sects. 24, 25.)

The 26th section provides that where, on an application under the Act, the concurrence or consent of any person as aforesaid shall not be obtained, a notice may be given to such person in such manner as the Court shall direct, requiring him to say whether he assents or dissents, and if he does not reply, he will be deemed to have submitted his rights and interests to be dealt with by the Court; and the Court is authorized by sects. 27 and 28 to dispense with notice and consents in certain cases. The 29th section empowers the Court to give effect to any petition, subject to and so as not to affect the rights, estate, or interest of any person whose concurrence or consent has been refused, or who has not submitted, or is not deemed to have submitted, his rights or interests to be dealt with by the Court, or whose rights, estate, or interest ought, in the opinion of the Court, to be excepted.

All money to be received on any sale effected under the authority of the Act may, if the Court shall think fit, be paid to any trustees of whom it shall approve, or otherwise the same must be paid into Court, and in every case it must be applied as the Court shall from time to time direct to some one or more of the following purposes, namely: the purchase or redemption of the land tax, the discharge or redemption of any incumbrance affecting the hereditaments in respect of which such money was paid, or affecting any other hereditaments subject to the same uses or trusts, the purchase of other hereditaments to be settled in the same manner as the hereditaments in respect of which the money was paid, or the payment to any person becoming absolutely entitled (sect. 34); and until the money can be applied as aforesaid, it must be invested as the Court may direct in some or one of the investments in which cash under the control of the Court is for the time being authorized to be invested. (Sect. 36.)

The powers conferred by the Act cannot be exercised if an express declaration that they shall not be exercised is contained in the settlement. (Sect. 38.)

By the 50th section, where applications were made or consented to under the Act by a married woman, it was necessary that she should be first separately examined by the Court, or by some solicitor appointed by the Court for the purpose, but such examination is not now necessary as

intended to be hereby assured, made his will, dated, &c., and thereby devised all his messuages, lands, tenements, and hereditaments, being freehold of inheritance, to the uses following (that is to say), to the use of the said A. B. and his assigns during his life, without impeachment of waste, with remainder to the use that E. B., the wife of the said A. B., should, after the decease of the said A. B., receive the yearly rent-charge of £500, to be charged upon and issuing out of the said premises, and subject thereto to the use of L. M. and N. O., their executors, administrators, and assigns, for the term of 1000 years computed from the day of the death of the said A. B., without impeachment of waste, upon the usual trusts for securing the said yearly rent-charge, and for raising the sum of £10,000 for the portions of the younger children of the said A. B., with remainder to the use of the first and other sons of the said A. B. successively, according to seniority in tail male, with remainder to the use of the said A. B., his heirs and assigns, for ever (*Recite death of testator, and probate of his will*): AND WHEREAS the said A. B. has now living three children by the said E. B. his wife (that is to say), F. B. his eldest son, G. B. and H. B., all of whom are under the age of twenty-one years: AND WHEREAS by an order of the High Court of Justice (Chancery Division) dated the — day of —, and made in the matter of an Act made and passed in the 40th and 41st years of the reign of her present Majesty, intituled “An Act to Consolidate and Amend the Law relating to Leases and Sales of Settled Estates,” and in the matter of a farm and lands known as — farm, situate in the parish of —, in the county of —, and containing — or thereabouts (meaning the farm and lands intended to be hereby assured),

CONVEYANCE
ON SALE UNDER
SETTLED
ESTATES ACT.

Will of testator devising property to A. B. for life, with remainders over.

That A. B. has three children, all infants.

Order of Court for sale under Settled Estates Act.

to a woman who has married since the commencement of the Married Women's Property Act (*Riddell v. Errington*, 26 Ch. D. 228); or in the case of a woman married before the commencement of the Act as to property which she may afterwards acquire. (*In re Harris' Settled Estates*, 28 Ch. D. 171.)

By the Conveyancing Act, 1881, s. 41, it is provided that when a person in his own right seised or entitled to land for an estate in fee simple, or for any leasehold interest at a rent, is an infant, the land shall be deemed to be a settled estate within the Settled Estates Act, 1877; and by the Conveyancing Act, 1882, the 17th section of the Settled Estates Act, 1877, is repealed. (See also sect. 70 of the Conveyancing Act, 1881.)

CONVEYANCE
ON SALE UNDER
SETTLED
ESTATES ACT.

and which order was made upon the petition of the said A. B. with the consent of the said E. B. (she having been first examined apart from her said husband touching her knowledge of the nature and effect of the said application, by J. a solicitor of the said Court appointed for that purpose, and it appearing from the certificate of the said J. that he was satisfied that the said E. B. was aware of the nature and effect of the said application, and that she freely desired to consent to the same), and with the consent also of the said F. B., G. B., and H. B. given by K. their guardian on their behalf, pursuant to the direction of the said Court, and with the consent also of the said L. M. and N. O., on behalf of the unborn children of the said A. B., the said Court being of opinion that it was proper and consistent, with a due regard for the interests of all parties entitled under the said will of the said X. Y., that a sale should be authorized to be made of the farm and lands therein described (being the farm and lands intended to be hereby assured), did order that the said farm and lands be sold accordingly, with the approbation of the judge, subject to the provisions and restrictions in the said Act contained; and the said Court did further order that the money to arise by such sale be paid into Court to the credit of *ex parte* A. B., in the matter of "An Act to Consolidate and Amend the Law relating to Leases and Sales of Settled Estates," "the proceeds of the sale of settled estates under the will of X. Y. deceased;" and the said Court did further order that the said A. B. should execute the deed or deeds of conveyance of the said farm and lands to the purchaser or purchasers thereof on such sale being effected; AND WHEREAS in pursuance of the said order the said farm and lands intended to be hereby assured were on the — day of — put up for sale by public auction in one lot, with the approbation of the judge to whose Court the said application was made, and the said C. D. was the highest bidder for, and was declared the purchaser of, the said farm and lands at the price of £—; AND WHEREAS the result of the said sale has been certified by the chief clerk of the said judge, by his certificate dated the — day of —, which certificate was approved by the said judge on the — day of —, and has been since filed in the said Court: AND WHEREAS the said C. D. did, on the — day of — last, pay the said purchase-money of £— into

Pursuant to
order lands
put up for sale.

Chief clerk's
certificate.

Payment of
purchase-
money into
Court.

Court to the credit of *ex parte* A. B., in the matter of "An Act to Consolidate and Amend the Law relating to Leases and Sales of Settled Estates," "The proceeds of the sale of settled estates under the will of X. Y.," as appears by the receipt of one of the cashiers of the Bank of England: NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said order in this behalf, and for the purpose of carrying into effect the said sale, and in consideration of the said sum of £—, paid by the said C. D., as hereinbefore is mentioned, the said A. B. and as beneficial owner so far only as regards his estate for life in the said hereditaments, in exercise of the power for this purpose conferred upon him by the said Act, and of all other powers (if any) him hereunto enabling, HEREBY REVOKES all the uses, trusts and provisions, by and in the said will of the said X. Y. declared and contained concerning the farm, lands and hereditaments hereinafter described, and HEREBY APPOINTS THAT ALL, &c. (*parcels*), shall, from and immediately after the execution of these presents, go, remain, and be to the use of the said C. D., in fee simple: AND THE SAID A. B. hereby acknowledges the right of the said C. D. to production of the documents of title mentioned in the schedule hereto, and to delivery of copies thereof, and hereby undertakes for the safe custody thereof.

IN WITNESS, &c.

CONVEYANCE
ON SALE UNDER
SETTLED
ESTATES ACT.

Witnessing
part.

Consideration.

Vendor
revokes uses of
will, and
appoints
parcels to pur-
chaser in fee.

Acknowledg-
ment and
undertaking.

THE SCHEDULE ABOVE REFERRED TO.

No. CXVI.

UNDER PARTITION ACT.

CONVEYANCE on a SALE under the PARTITION ACT, 1868, where the PROPERTY has DESCENDED on TWO Co-HEIRESSSES, of whom ONE is an INFANT (a).

Parties.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*one co-heiress*), of the first part, C. D., of &c., the person appointed, as hereinafter appears, to convey in the place of E. F., an infant (*other co-heiress*), of the second part, and G. H., of, &c. (*purchaser*), of the third part: WHEREAS X. Y., late of, &c., died on the — day of —, 18—, intestate, leaving the said A. B. and E. F., his only children and co-heiresses at law, and he was at his death seised in fee simple of the hereditaments intended to be hereby conveyed: AND WHEREAS the said A. B. attained the age of twenty-one years on the — day of —, but the said E. F. is an infant: AND WHEREAS by a judgment of the High Court of Justice (Chancery Division), dated, &c., and made in a cause wherein the said A. B. is plaintiff, and the said E. F. defendant, it was ordered on the request of the plaintiff that the hereditaments intended to be hereby conveyed be sold: AND it was declared that upon

Recite death of father of co-heiresses intestate.

Decree of Court ordering sale.

Provisions of Partition Act.

(a) By the Partition Act, 1868 (31 & 32 Vict. c. 40), it is provided that in suits for partition, where a decree for partition might have been made, if from the nature of the property or the number of the parties interested therein, or the absence or disability of some of those parties, or any other circumstance, a sale of the property is considered by the Court to be more beneficial than a division, the Court of Chancery may, on the request of any of the parties, direct a sale (sect. 3); or if the party or parties interested, individually or collectively, to the extent of one moiety or upwards in the property in question, request the Court to direct a sale of the property and a distribution of the proceeds, instead of a division of the property among the parties interested, the Court shall, unless it sees good reason to the contrary, direct a sale (sect. 4); or if any party interested in the property requests the Court to direct a sale and a distribution of the proceeds, the Court may, unless the other parties interested in the property, or some of them, undertake to purchase the share of the party requesting the sale, direct a sale. (Sect. 5.) The 7th section provides that sect. 30 of the Trustee Act, 1850, shall apply to cases where, in suits for partition, the Court directs a sale instead of a division of the property; and the 8th section declares that sects. 23—25 (both inclusive) of the Leases and Sales of Settled Estates Act shall extend to money to be received on any sale effected under the authority of the Act. (See also the Partition Amendment Act (39 & 40 Vict. c. 71).)

such sale the defendant E. F. would be a trustee of her undivided moiety of the said hereditaments for the purchaser thereof within the meaning of the Trustee Act, 1850, and the Court appointed the said C. D. to convey the moiety of the said E. F. accordingly: AND WHEREAS (*recite sale by auction, and G. H. declared highest bidder—chief clerk's certificate—order to pay purchase-money into court, and payment by purchaser accordingly, suprd, p. 382, mutatis mutandis*): NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said decree and orders, and in consideration, &c., the said A. B., as beneficial owner, as to one moiety of the hereditaments hereinafter described, and the said C. D., as to the other moiety thereof, for and on behalf of the said E. F. as beneficial owner, hereby respectively convey unto the said G. H., &c. (*Conveyance of parcels to G. H. in fee simple*).

IN WITNESS, &c.

UNDER PARTITION ACT.

Witnessing part.
One co-heiress and the person appointed on behalf of other co-heiress convey to purchaser in fee.

No. CXVII.

CONVEYANCE of FREEHOLDS of a LUNATIC by the COMMITTEE of HIS ESTATE (b).

CONVEYANCE OF FREEHOLDS OF LUNATIC BY COMMITTEE.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c., a person of unsound mind, of the one part, C. D., of, &c., the committee of the estate of the said A. B., of the second part, and E. F., of, &c. (*purchaser*), of the third part: WHEREAS F. G., late of, &c., deceased, duly made his will in writing, dated the — day of —, and thereby after making divers devises and bequests, devised and bequeathed all the residue of his real and personal estate unto the said A. B. abso-

Parties.

Recite will devising residuary real estate to lunatic.

(b) Under the 116th section of the Lunacy Regulation Act (16 & 17 Vict. c. 70), the committee, by an order of the Lord Chancellor, may sell any of the lands of the lunatic for the purposes therein mentioned, and in the name and on the behalf of the lunatic convey the same to the purchaser. (See the 124th section as to the powers of the committee in respect of land in which the lunatic has an undivided share. See also *In re Weld*, 20 Ch. D. 514; *In re Harwood*, 35 Ch. D. 470.)

**CONVEYANCE
OF FREEHOLDS
OF LUNATIC BY
COMMITTEE.**

That hereditaments after described form part of residuary estate.

That by inquisition under commission lunatic was found to be a person of unsound mind, and C. D. was appointed committee.

That committee has agreed to sell hereditaments.

Order of Lords Justices that conditional agreement should be confirmed,

and that it should be referred to Masters in Lunacy to approve of conveyance.

That one of the Masters had settled and approved of this conveyance.

Consideration.

Lunatic by his committee

conveys parcels to purchaser.

lutely, and appointed L. M., of, &c., and N. O., of, &c. executors of his said will (*death of testator, and probate of his will*): AND WHEREAS the hereditaments hereinafter described form part of the residuary real estate devised by the said will as aforesaid: AND WHEREAS by an inquisition taken before —, Esq., one of the Masters in Lunacy, on the — day of —, under a Commission of Lunacy duly issued for that purpose, the said A. B. was found to be a person of unsound mind: AND WHEREAS by an order of the Lords Justices of Appeal made on the — day of —, in the matter of A. B., a person of unsound mind, it was ordered that the said C. D. should be the Committee of the person and estate of the said A. B.: AND WHEREAS the said C. D. as such Committee as aforesaid hath agreed on behalf of the said A. B. to sell the hereditaments hereinafter described to the said E. F. at the price of £—, subject to the approbation of the Lords Justices of Appeal: AND WHEREAS by an order of the said Lords Justices, made on the — day of —, in the matter of A. B., a person of unsound mind, upon the petition of the said C. D., it was ordered that the said conditional agreement should be carried into effect, and that the said purchase-money or sum of £— should be paid to the said C. D. as such Committee as aforesaid, and that it should be referred to the Masters in Lunacy to settle and approve of a proper conveyance of the said hereditaments unto the said E. F. accordingly: AND WHEREAS —, one of the Masters in Lunacy, has settled and approved of these presents as a proper conveyance, pursuant to the last made order: NOW THIS INDENTURE WITNESSETH that, under and pursuant to the said order of the — day of —, and in consideration of the sum of £— to the said C. D. as such Committee as aforesaid paid by the said E. F. on or before the execution of these presents (the receipt whereof the said C. D. hereby acknowledges), the said A. B., as beneficial owner, acting by the said C. D. as such Committee as aforesaid, and also the said C. D. hereby respectively convey unto the said E. F. ALL, &c. (*here describe parcels*), To HOLD the same unto and to the use of the said E. F. in fee simple. IN WITNESS whereof the said C. D. as such Committee as aforesaid, in the place and on behalf of the said A. B., has subscribed the name and affixed the seal of the said

A. B., and the said C. D. hath hereunto set his hand and seal the day and year first above written.

CONVEYANCE
OF FREEHOLDS
OF LUNATIC BY
COMMITTEE.

No. CXVIII.

CONVEYANCE to the TRUSTEES of a FRIENDLY SOCIETY
or WORKING MEN'S CLUB established under the
FRIENDLY SOCIETIES ACT, 1875 (a).

CONVEYANCE
TO TRUSTEES
OF FRIENDLY
SOCIETY.

THIS INDENTURE, made the — day of —, 18—, Parties.
BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of,
&c., E. F., of, &c., and G. H., of, &c., the Trustees of the —
"Society" [or the "— Working Men's Club"] being
established at —, in the county of —, under the provisions
of the Friendly Societies Act, 1875 (hereinafter called "the
said trustees") of the other part: WITNESSETH, that in

(a) A working-men's club is one of the societies authorized to be registered by the Friendly Societies Act, 1875, and is therein defined as a society for purposes of social intercourse, mutual helpfulness, mental and moral improvement, and rational recreation. (Sect. 8, sub-sect. 4.) The Act provides, that every society registered thereunder shall (*inter alia*) have a registered office, and from time to time, at some meeting of the society, by a resolution of a majority of the members present and entitled to vote thereat, appoint one or more trustees of the society, and send to the registrar a copy of every resolution, appointing a trustee, signed by the trustee so appointed, and by the secretary. (Sect. 14.) The Act also provides that a registered society may (if the rules so provide) hold, purchase, or take on lease in the names of the trustees for the time being of such society, in every county where it has an office, any land, and may sell, exchange, mortgage, lease, or build upon the same, and no purchaser, assignee, mortgagee, or tenant is bound to inquire as to the authority for any sale, exchange, mortgage, or lease by the trustees, and the receipt of the trustees is a discharge for all moneys arising from or in connection with such sale, exchange, mortgage, or lease. (Sect. 16, sub-sect. 2.) The Act also provides that all property belonging to a society shall vest in the trustees for the time being of the society for the use and benefit of the society and the members thereof, and of all persons claiming through the members, according to the rules of the society; and that upon the death, resignation, or removal of a trustee the property vested in such trustee vests in the succeeding trustees, either solely or together with any surviving or continuing trustees, and until the appointment of succeeding trustees, in such surviving or continuing trustees only, or in the executors or administrators of the last surviving or continuing trustee, subject to the same trusts without any conveyance. (Sect. 16, sub-sects. 3, 4.)

Provisions of
Friendly
Societies Act,
1875.

CONVEYANCE
TO TRUSTEES
OF FRIENDLY
SOCIETY.

Considera-
tion.

Vendor
conveys
parcels
to trustees
of friendly
society.

consideration of the sum of £——, on or before the execution of these presents paid to the said A. B. by the said trustees out of the funds of the society [*or club*] (the receipt whereof the said A. B. hereby acknowledges), THE SAID A. B., as beneficial owner, hereby conveys unto the said trustees, ALL, &c. (*parcels*), To HOLD the same unto and to the use of the trustees in fee simple for the use and benefit of the said society [*or club*] and the members thereof, and of all persons claiming through the members according to the rules of the said society [*or club*].

IN WITNESS, &c.

No. CXIX.

CONVEYANCE
BY TRUSTEES
OF FRIENDLY
SOCIETY.

CONVEYANCE *by the TRUSTEES of a FRIENDLY SOCIETY*
or WORKING MEN'S CLUB to a PURCHASER.

Parties.

Recite
appointment
of new trustee
at a meeting
of members.

Agreement by
trustees to sell.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN A. B., of, &c., C. D., of, &c., and E. F., of, &c., the trustees, &c. (*as in the last precedent*), of the one part, and I. K., of, &c. (*purchaser*), of the other part (*Recite last precedent*): AND WHEREAS at a meeting of the members of the said society held at the registered office on the —— day of ——, 18—, it having been reported that the said G. H. was desirous of resigning his trusteeship, it was resolved by a majority of the members present and entitled to vote thereat, that the resignation of the said G. H. be accepted, and that the said A. B. be appointed a trustee of the said society in his place jointly with the said C. D. and E. F., and a copy of the said resolution, signed by the said A. B. and by the secretary of the society, was sent to the Registrar of Friendly Societies as required by the said Act (*a*): AND WHEREAS in pursuance of a resolution passed at a meeting of the members of the said society, held at

(*a*) A purchaser from a registered society should require the production of a copy of the rules with the acknowledgment of registry, bearing the seal or stamp of the Central Registry Office (sects. 11, 39), and also a copy of the resolution appointing the trustees by whom the sale is made.

—, on the — day of — last, the said A. B., C. D., and E. F., as the trustees of the said society (hereinafter called “the said trustees”), have agreed to sell to the said I. K. the messuage and hereditaments hereinafter described and the fee simple thereof for the sum of £—: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £—, paid to the said trustees by the said I. K. on, or before the execution of these presents (the receipt whereof the said trustees hereby acknowledge), the said trustees, as trustees, hereby convey unto the said I. K., ALL, &c. (*parcels*): To HOLD the same unto and to the use of the said I. K. in fee simple.

IN WITNESS, &c.

CONVEYANCE
BY TRUSTEES
OF FRIENDLY
SOCIETY.

Consideration.
Trustees convey to purchaser in fee simple.

No. CXX.

CONVEYANCE (a) of FREEHOLDS to a PURCHASER in consideration of a GROSS SUM, and also of an ANNUITY charged on the LAND (b).

CONVEYANCE
IN CONSIDERATION
OF ANNUITY.

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: WHEREAS the said A. B. has agreed to sell to the said C. D., the hereditaments hereinafter described, in consideration of the sum of £1,000, and also in consideration of an annual sum, or yearly rent-charge, of £20, payable to the said A. B. for his life, and to be secured to him as hereinafter mentioned: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £1,000 to

Parties.

Agreement
for sale.

Witnessing
part.

(a) The stamp on this deed will be £5 in respect of the gross sum, and £1 5s. in respect of the annuity. (See 33 & 34 Vict. c. 97, s. 72, sub-s. 3, and *supra*, p. 214.) Stamp.

(b) As it is doubtful whether a conveyance of land to the use that the vendor shall receive thereout a rent-charge for his life and subject thereto to the use of the purchaser, comes within the 12th section of the 18 & 19 Vict. c. 15, it will be always safer to register such a conveyance under that Act. (See *supra*, p. 168.)

CONVEYANCE
IN CONSIDERA-
TION OF
ANNUITY.

Consideration
of gross sum,
and of
annuity.

Vendor con-
veys parcels
to purchaser,
to use that
annuity be
received by
vendor for
his life,

and, subject to
annuity, to use
of purchaser.

Covenant by
purchaser to
pay annuity.

the said A. B. paid by the said C. D. on or before the execution of these presents (*the receipt, &c.*), and also in consideration of the annual sum or yearly rent-charge of £20 hereinafter limited and secured to the said A. B., the said A. B., as beneficial owner, hereby conveys unto the said C. D., ALL, &c. (*parcels*): To HOLD the same unto the said C. D., in fee simple: To THE USE that the said A. B. may henceforth during his life receive an annual sum or yearly rent-charge of £20, to be issuing out of the said hereditaments and premises, and to be paid by two equal half-yearly payments, on the — day of —, and the — day of —, in every year, the first of such half-yearly payments to be made on the — day of —

next (c): And subject to and charged with the said annual sum or yearly rent-charge, To THE USE of the said C. D., in fee simple: AND THE said C. D. hereby covenants with the said A. B. to pay to the said A. B. the said annual sum of £20, at the times and in the manner hereinbefore appointed for the payment thereof.

IN WITNESS, &c.

No. CXXI.

CONVEYANCE
IN CONSIDERA-
TION OF
ANNUITY,
WITH FULLER
POWERS, AND
POWER TO
SUBSTITUTE
GOVERNMENT
ANNUITY.

CONVEYANCE (*d*) to a PURCHASER in CONSIDERATION of an ANNUITY, with fuller POWERS for SECURING it than in the last PRECEDENT, and with POWER for PURCHASER to buy a GOVERNMENT ANNUITY in SUBSTITUTION (*e*).

Parties.

Recite
agreement
for sale in
consideration
of annuity.

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c. (*vendor*), of the first part, C. D. of, &c. (*purchaser*), of the second part, and E. F. of, &c. (*trustee*), of the third part: WHEREAS the said A. B. has agreed to sell to the said C. D. the hereditaments hereinafter described, in consideration of an annual sum or yearly rent-charge of £100, payable to the said A. B. for his life, and to be secured as hereinafter

(c) See note, *supra*, p. 353.

(d) The stamp on this deed will be £6.

(e) See note (*b*), *supra*, p. 389.

mentioned: NOW THIS INDENTURE WITNESSETH, that in consideration of the annual sum or yearly rent-charge of £100, hereinafter limited and secured, the said A. B., as beneficial owner, hereby conveys unto the said E. F., ALL, &c. (*parcels, &c.*): To HOLD the same unto the said E. F., in fee simple: To THE USE that, &c. (*Limitation of rent-charge to A. B. for his life (f)*): AND SUBJECT TO and charged with the said annual sum or yearly rent-charge of £100, To THE USE of the said E. F., for the term of one thousand years, computed from the day of the date of these presents, without impeachment of waste, upon the trusts hereinafter declared concerning the same: AND FROM AND AFTER the expiration or sooner determination of the said term of one thousand years, and in the meantime subject thereto and to the trusts thereof, To THE USE of the said C. D., in fee simple: AND IT IS HEREBY AGREED AND DECLARED that the said hereditaments and premises are hereby limited to the said E. F. for the said term of one thousand years, UPON TRUST that if the said yearly rent-charge of £100, or any part thereof, shall at any time be unpaid for forty days after any of the times hereby appointed for payment thereof (although there shall not have been any legal demand made thereof), then and so often as the same shall happen, the said E. F., his executors, administrators, or assigns, shall, on the request in writing of the said A. B., or his assigns, enter into the possession or receipt of the rents and profits of the said hereditaments and premises, and let the same, or do and shall, on the like request, either mortgage or sell the said hereditaments and premises, or any of them, or any part thereof, for all or any part of the said term of one thousand years: AND IT IS HEREBY AGREED AND DECLARED, that if on any occasion on which the said trust for sale of the premises comprised in the said term of one thousand years shall be exercisable, the said A. B., or his assigns, shall request the said E. F., his executors, administrators, or assigns, to offer and contract for the sale of the said premises in fee simple, instead of offering the same for sale for the residue of the said term only, the said E. F., his executors, administrators, or assigns, shall offer and contract for the sale of the said premises in fee simple accord-

CONVEYANCE
IN CONSIDERA-
TION OF
ANNUITY,
WITH FULLER
POWERS, AND
POWER TO
SUBSTITUTE
GOVERNMENT
ANNUITY.

Witnessing
part.
Vendor con-
veys parcels.
To the use that
vendor may
receive rent-
charge for his
life,
and subject
thereto to use
of trustee for
term,
with remain-
der to pur-
chaser in fee.
Declaration of
trusts of term.

Power to sell
the fee simple.

(f) See *supra*, note at p. 353.

CONVEYANCE
IN CONSIDERA-
TION OF
ANNUITY,
WITH FULLER
POWERS, AND
POWER TO
SUBSTITUTE
GOVERNMENT
ANNUITY.

Trusts of sale
or mortgage
moneys.

ingly: AND upon any such sale in fee simple, it shall be lawful for the said A. B., or his assigns, to appoint the same to the purchaser, or as he shall direct, freed and discharged from the uses, trusts, and provisions limited, declared, and contained by and in these presents: AND IT IS HEREBY FURTHER AGREED AND DECLARED, that no purchaser at any sale of the premises, either for the term of one thousand years or in fee simple, shall be concerned to see or inquire whether the case has happened in which such sale ought to be made, or to regard any notice to the contrary: AND IT IS HEREBY FURTHER AGREED AND DECLARED, that the said E. F., his executors, administrators, and assigns shall stand possessed of all moneys to arise by any sale or mortgage made in pursuance of these presents, and of the rents and profits of the said premises, from the time of his or their entering into receipt thereof until the said premises shall be sold, UPON TRUST that he or they shall apply the same in payment to the said A. B., or his assigns, of all arrears of the said yearly rent-charge of £100, and all costs, charges, and expenses to be incurred by the said A. B. or his assigns, by reason or on account of the non-payment of the said yearly rent-charge, or any part thereof, or otherwise relating thereto, and also all costs, charges, and expenses to be incurred by the said E. F., his executors, administrators, or assigns, in or about the execution of the trusts and powers of these presents, and shall invest the residue of the moneys to be received by the said E. F., his executors, administrators, or assigns, from any such sale or mortgage as aforesaid, or in respect of the rents and profits of the said premises, in or upon any of the parliamentary stocks or public funds of Great Britain, or at interest upon government or real securities, in the name or names of the said E. F., his executors, administrators, or assigns, with power to vary such investments for others of the same or a like nature, and shall stand possessed of the moneys so to be invested, and the stocks, funds, and securities in or upon which the same shall be invested, upon trust, by and out of the dividends, interest, and annual produce thereof, and if such dividends, interest, and annual produce shall be insufficient, then, in addition thereto, by calling in and disposing from time to time of a sufficient part of the principal money so to be invested, or the stocks, funds, or securities representing the

same, to pay unto the said A. B., or his assigns, the yearly rent-charge of £——, as and when the same shall grow due and be payable, or so much thereof as shall from time to time be in arrear and unpaid, and all costs, charges, and expenses to be incurred by the said A. B., or his assigns, by reason or on account of the non-payment thereof, or otherwise relating thereto, and also all costs, charges, and expenses to be incurred by the said E. F., his executors, administrators or assigns, in or about the execution of the trusts and powers of these presents and subject to the trusts hereinbefore declared in trust for the said C. D., his executors, administrators, and assigns, for his and their own absolute use and benefit: AND THE SAID C. D. hereby covenants with the said A. B., that the said C. D., his heirs, executors, administrators, or assigns, will pay to the said A. B. the said annual sum or yearly rent-charge of £100, at the times and in the manner hereinbefore appointed for payment of the same, and also will, so long as the said yearly rent-charge shall remain charged on the messuage and buildings hereby conveyed, keep the same insured against loss or damage by fire in some public office of insurance, in a sum not less than two-thirds of the value thereof, and will on demand produce the policy or policies of insurance for the time being, and the receipts for the premiums in respect thereof, to the said A. B.: AND IT IS HEREBY DECLARED, that the power of appointing a new trustee or new trustees conferred by statute shall for the purposes of these presents be vested in the said A. B.: PROVIDED ALWAYS, and it is hereby agreed and declared, that in case the said C. D., his heirs or assigns, shall at any time during the life of the said A. B., purchase in the name of the said A. B., from the Commissioners for the Reduction of the National Debt, a government annuity of £100 for the life of the said A. B., so that the first half-yearly payment of such government annuity shall be made within six calendar months after the quarterly day of payment of the yearly rent-charge hereby secured last preceding the day of the purchase of such government annuity, and in case the said C. D., his heirs or assigns, shall, on the purchase of such government annuity, have paid up all arrears of the yearly rent-charge hereby created up to and including the last-mentioned quarterly day, and all costs, charges, and expenses due in respect of the same yearly rent-charge then and in such

CONVEYANCE
IN CONSIDERA-
TION OF
ANNUITY,
WITH FULLER
POWERS, AND
POWER TO
SUBSTITUTE
GOVERNMENT
ANNUITY.

Covenant by
purchaser to
pay annuity,

and to insure
against fire.

Power of
appointing
new trustees.

Power to pur-
chaser to buy
government
annuity for
vendor for life.

CONVEYANCE
IN CONSIDERA-
TION OF
ANNUITY,
WITH FULLER
POWERS, AND
POWER TO
SUBSTITUTE
GOVERNMENT
ANNUITY.

case the said A. B. will accept the government annuity so to be purchased in lieu of and substitution for the said yearly rent-charge, and thereupon the said rent-charge, and the said term of one thousand years, and all the trusts, powers, and provisions herein declared and contained for securing and enforcing payment of the same shall cease, and the said C. D., his heirs and assigns, shall thenceforth be seised in possession of the said hereditaments and premises discharged from the said yearly rent-charge, and the said term of one thousand years and the trusts thereof, and from all other the trusts, powers, and provisions herein contained for securing and enforcing payment of the same yearly rent-charge and every of them.

IN WITNESS, &c.

No. CXXII.

CONVEYANCE
IN CONSIDERA-
TION OF
ANNUITY FOR
LIVES OF
VENDOR AND
WIFE
SUCCESSIVELY.

CONVEYANCE of FREEHOLDS to a PURCHASER in CON-
SIDERATION of an ANNUITY PAYABLE to the VENDOR
and his WIFE successively for life and SECURED by the
PURCHASER'S BOND (g).

Parties.

Recite agree-
ment for sale
in considera-
tion of
annuity.

Bond to secure
annuity.

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: WHEREAS the said A. B. has agreed to sell the hereditaments hereinafter described to the said C. D., in consideration of an annuity of £100 to be paid to the said A. B. during his life, and after his death to E. B. his wife, if she shall survive him, during her life, and to be secured by the bond of the said C. D.: AND WHEREAS immediately before the execution of these presents, the said C. D. has executed to the said A. B. his bond in a sufficient penalty, bearing even date with these presents, subject to a condition thereunder written for making void the same upon payment by the said C. D., his heirs, executors, or administrators, of an annuity of £100 to the

Stamp.

(g) The stamp on this deed will be £6, and the stamp on the bond to secure the annuity will be 10s. (33 & 34 Vict. c. 97, s. 72, sub-s. 4.)

said A. B. during his life, and after his decease to the said E. B., if she shall survive the said A. B., during her life, and to be paid half-yearly at the times therein mentioned: NOW THIS INDENTURE WITNESSETH, that in consideration of the annuity of £100, secured by the said bond as aforesaid, the said A. B., as beneficial owner, hereby conveys, &c. (*Conveyance of freeholds to C. D., supra*, p. 225).

IN WITNESS, &c.

CONVEYANCE
IN CONSIDERA-
TION OF
ANNUITY FOR
LIVES OF
VENDOR AND
WIFE
SUCCESSIVELY.

Witnessing
part.
Considera-
tion.
Vendor
conveys to
purchaser in
fee.

No. CXXIII.

GRANT on a SALE of ANNUITY to GRANTEE for his own Life, charged upon Lands of GRANTOR, COVENANT by GRANTOR to pay ANNUITY (*h*).

GRANT OF
ANNUITY FOR
LIFE OF
GRANTEE
SECURED ON
FREEHOLDS OF
GRANTOR.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*grantor*), of the one part, and C. D., of, &c. (*grantee*), of the other part: WHEREAS the said A. B. has agreed to sell to the said C. D. an annuity of £80, for the life of the said C. D., and to be secured in manner hereinafter mentioned, at the price of £—: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £— to the said A. B. paid by the said C. D. on or before the execution of these presents (*the receipt, &c.*), the said A. B., as beneficial owner, hereby grants unto the said C. D., ONE annuity of £80, during the life of the said C. D., to commence and be computed from the day of the date of these presents, and to be charged upon and issuing and payable out of the lands and hereditaments comprised in the schedule hereto, and to be paid by equal half-yearly payments on the — day of — and the — day of — in every year, the first half-yearly payment thereof to be made on the — day of — next: AND THE SAID A. B. hereby covenants with the said C. D. that the said A. B., his

Parties.

Recite agree-
ment for sale
of annuity.

Witnesseth.

Considera-
tion.

Grant of
annuity for life
of grantee.

Charged upon
lands of
grantor.

Covenant by
grantor to pay
annuity.

(*h*) This deed must be stamped with an *ad valorem* conveyance stamp on the sum paid to A. B. by C. D., and must be registered under the 18 & 19 Vict. c. 15, s. 12. (See *supra*, p. 168.)

GRANT OF
ANNUITY FOR
LIFE OF
GRANTEE
SECURED ON
FREEHOLDS OF
GRANTOR.

heirs, executors, or administrators, will pay to the said C. D., during his life, the said annuity of £—— on the days and in the manner aforesaid (i).

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. CXXIV.

GRANT OF
ANNUITY
SECURED ON
LIFE INTEREST
IN STOCK.

VOLUNTARY GRANT (k) *of an ANNUITY for the JOINT LIVES of the GRANTOR and GRANTEE, secured by an ASSIGNMENT of a LIFE INTEREST in STOCK.*

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*grantor*), of the one part, and C. D., of, &c. (the mother of the said A. B.) (*grantee*), of the other part (*Recite indenture under which A. B. is entitled to a life interest in a sum of £—— £2½ per Cent. Consolidated Stock standing in the names of E. F. and G. H. as trustees*): AND WHEREAS the said A. B. hath agreed to grant and assign to the said C. D. an annuity of £40 during their joint lives charged upon the life interest of the said A. B. in the said trust fund in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that the said A. B., in consideration of his natural love and affection for the said C. D., hereby grants and assigns unto the said C. D. ONE annuity of £40 during the joint lives of the said A. B. and C. D., to commence from the day of the date of these presents, and to be charged upon and issuing and payable out of the dividends, interest, and annual produce of

Witnessing
part.

Grant of
annuity.

(i) The powers of distress and entry and the demise to trustees for a term to secure the annuity, which were formerly inserted in annuity deeds, are now unnecessary. (See Conveyancing Act, 1881, s. 44.)

(k) This deed must be stamped with 10s., but it need not be registered, as the annuity is solely secured upon personal estate. (See *supra*, p. 168.)

the said sum of £—— £2½ per Cent. Consolidated Stock now standing in the names of the said E. F. and G. H. in the books of the Governor and Company of the Bank of England as hereinbefore is mentioned, or the stocks, funds, and securities for the time being representing the same, to be paid by equal half-yearly payments, the first of such half-yearly payments to be made on the —— day of —— next: AND THE SAID A. B. hereby directs the said E. F. and G. H. and the survivor of them, or other the trustees or trustee for the time being of the said recited indenture of settlement to pay the said annuity out of the said dividends, interest, and annual produce in manner aforesaid: PROVIDED ALWAYS, that the grant of the said annuity shall not prevent or interfere with the exercise of the power contained in the said indenture of settlement of varying the investments of the trust funds, but such power may be exercised in all respects as if these presents had not been executed. PROVIDED ALSO that the interest, dividends, and annual produce hereinbefore charged with the said annuity shall be and remain the sole fund charged therewith, and the said A. B. shall not be personally liable for the payment thereof.

IN WITNESS, &c.

GRANT OF
ANNUITY
SECURED ON
LIFE INTEREST
IN STOCK.

Direction to
trustees to pay
annuity.

Grant of
annuity not to
prejudice
power of
varying in-
vestments
contained in
settlement.

Income to be
sole fund, and
grantor not to
be liable.

No. CXXV.

DEED of ENFRANCHISEMENT of COPYHOLDS.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*lord of the manor*), of the one part, and C. D. of, &c. (*copyholder*), of the other part: WHEREAS G. H., late of, &c., being seised in fee simple of (amongst other hereditaments) the manor of E. with the appurtenances, made his will, dated the —— day of ——, and thereby devised all his manors, &c. in the county of ——, unto and to the use of the said A. B., his heirs and assigns (*Recite testator's death and probate of his will*): AND WHEREAS, at a general court baron holden for the

ENFRANCHISE-
MENT OF
COPYHOLDS.

Parties.

Recite devise
of heredita-
ments to lord.

ENFRANCHISE- MENT OF COPYHOLDS.	said manor of E., on or about the — day of —, the said C. D. was duly admitted to the hereditaments hereinafter described, to hold the same to him, his heirs, and assigns, at the will of the lord, according to the custom of the said manor, at and under the rents, fines, heriots, suits, and services therefor due and of right accustomed: AND WHEREAS the said A. B. hath agreed with the said C. D. for the enfranchisement of the hereditaments hereinafter described, for the sum of £—: NOW
Admittance of copyholder.	THIS INDENTURE WITNESSETH, that in consideration of the sum of £— to the said A. B., paid by the said C. D. on or before the execution of these presents (<i>the receipt whereof, &c.</i>), the said A. B., as beneficial owner, hereby enfranchises and conveys unto the said C. D., ALL, &c. (<i>parcels</i>): To HOLD the same, as freehold, freed and discharged from all rents, fines, heriots, suits and services, and other incidents of copyhold tenure, unto and to the use of the said C. D. in fee simple:
Agreement for enfranchise- ment.	AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B. hereby grants unto the said C. D., ALL such commonage and right of common in, upon, and over the respective waste and commonable lands of the said manor of —, as the said C. D., or any person or persons through whom he claims, held, enjoyed, or was entitled to in respect of and as appurtenant to the said hereditaments and premises hereby enfranchised, or any of them, and the freehold and inheritance of such commonable rights as aforesaid in like manner as the said C. D., or his customary heirs, could have used or exercised the same if the said premises had not been enfranchised, To HOLD the same unto and to the use of the said C. D., in fee simple (<i>l</i>).
Consideration.	
Lord enfranchises parcels.	
Grant by lord of the manor of commonable rights.	
To grantee.	

IN WITNESS, &c.

Lord cannot
be required to
give acknow-
ledgment or
undertaking.

(*l*) It is apprehended that the lord cannot be required to give an acknowledgment or undertaking as to the title deeds of the manor, and the want of it is not likely to be an inconvenience to the grantee, because on a sale by him the purchaser will have no right to inquire into the lord's title. (See Conveyancing Act, 1881, s. 3, sub-s. 3; *Re Agg-Gardner*, 25 Ch. D. 600.)

No. CXXVI.

DEED of ENFRANCHISEMENT by ECCLESIASTICAL COMMISSIONERS of COPYHOLDS for lives.

ENFRANCHISE-
MENT OF
COPYHOLDS
FOR LIVES.

THIS INDENTURE, made the — day of —, BETWEEN the Ecclesiastical Commissioners for England, of the one part, and A. B., of, &c. (*copyholder*), of the other part: WHEREAS at a court holden in and for the manor of —, in the county of —, the Dean and Chapter of the Cathedral Church of —, at —, lords of the said manor, granted unto the said A. B. (*parcels as described in Court Rolls*), To HOLD the same unto the said A. B. and his heirs for and during the lives of —, and the lives and life of the longest lived and liver of them, at and under the yearly rent of £—, and the heriots, suits, and services therefor due and of right accustomed, and the said A. B. was thereupon admitted tenant to the said premises: AND WHEREAS under or by virtue of the several Acts of Parliament relating to the Ecclesiastical Commissioners for England and an Order of her present Majesty in Council, dated the — day of —, and published in the London Gazette on the — day of —, ratifying a scheme of the Ecclesiastical Commissioners recited in the said order, ALL the manors, lands, tithes, tenements, and hereditaments which then belonged either in possession or reversion to the said Dean and Chapter (with certain exceptions not affecting the said manor of —) became vested in the said Ecclesiastical Commissioners: AND WHEREAS by an Order of her Majesty in Council, dated, &c., and published, &c. (*Recite Order in Council authorizing Ecclesiastical Commissioners to dispose of the property vested in them under previous order*): AND WHEREAS the said Ecclesiastical Commissioners have agreed with the said A. B. for the enfranchisement and sale to him of the hereditaments hereinafter described (being the hereditaments to which the said A. B. was admitted tenant on the — day of — as aforesaid), for the sum of £—: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £—, paid by the said A. B. into the Bank of Eng-

Parties.

Recite grant
by copy of
court roll to
A. B. for lives.

Order in
Council
transferring
capitular
estates to
Ecclesiastical
Commis-
sioners.

Order in
Council
empowering
Ecclesiastical
Commissioners
to dispose of
property.

Agreement for
enfranchise-
ment and sale.

Consideration.

ENFRANCHISE-
MENT OF
COPYHOLDS
FOR LIVES.

Ecclesiastical
Commissioners
enfranchise
parcels,

to use of
copyholder in
fee.

land, to the credit of the said Ecclesiastical Commissioners, as appointed by them in that behalf (the receipt whereof is testified by the memorandum indorsed hereon, and the payment whereof the Ecclesiastical Commissioners hereby acknowledge), the said Ecclesiastical Commissioners as trustees hereby enfranchise and convey unto the said A. B. ALL, &c. (*parcels by reference to a schedule*), To HOLD the same unto and to the use of the said A. B., in fee simple, as freehold, henceforth and for ever freed and discharged from all rents, heriots, fines, suits, services, and other incidents of copyhold tenure.

IN WITNESS whereof the said Ecclesiastical Commissioners have hereunto set their common seal the day and year first above written.

THE SCHEDULE ABOVE REFERRED TO.

No. CXXVII.

ENFRANCHISE-
MENT WHERE
CESTUIS QUE
VIE ARE
TENANTS.

DEED of ENFRANCHISEMENT of COPYHOLDS for LIVES by the Rector of a PARISH with the consent of the ECCLESIASTICAL COMMISSIONERS and the PATRON under 24 & 25 Vict. c. 105, where the CESTUIS QUE VIE are the TENANTS on the COURT ROLLS, as TRUSTEES for the BENEFICIAL Owner (m).

Parties.

THIS INDENTURE, made the — day of —, BETWEEN the Reverend A. B., rector of —, and as such rector lord of the manor of the rectory of —, of the first part, the Ecclesiastical Commissioners for England of the second part, C. D., of, &c., the patron of the said rectory, of the third part, and E. F., of, &c. (*copyholder*), of the fourth part: WHEREAS at a

Recite grant
of copyholds

(m) See stat. 21 & 22 Vict. c. 57, conferring powers on Ecclesiastical Corporations, with certain exceptions, and with approval of Ecclesiastical Commissioners, and also with certain consents, to sell, &c.

court holden in and for the said manor on the — day of —, 18—, the lord of the said manor granted in reversion to L. M., of, &c., then aged, &c., the lands and hereditaments hereinafter described and intended to be hereby enfranchised and conveyed with their appurtenances, To hold the same unto the said L. M. for his life from and after the deaths, surrenders, or forfeitures of X. and Y. respectively, In trust nevertheless for the said E. F., his heirs and assigns, at and under the yearly rent of £—, and the heriots, suits, and services therefor due and of right accustomed: AND WHEREAS at a court holden in and for the said manor on the — day of —, 18—, the homage presented the deaths of the said X. and Y., and thereupon the lord of the said manor granted to N. O., of, &c., then aged, &c., and P. Q., of, &c., then aged, &c., the said lands and hereditaments, To hold the same unto the said N. O. and P. Q. from and after the death, surrender, or forfeiture of the said L. M. during their lives and the life of the longest liver of them, upon trust nevertheless for the said E. F., his heirs and assigns, at and under the said yearly rent of £—, and the heriots, suits, and services therefor due and of right accustomed: AND WHEREAS the said A. B., as the rector of —, is now the lord of the manor of the rectory of —, and the said C. D. is the patron of the said rectory: AND WHEREAS it has been made to appear to the satisfaction of the Ecclesiastical Commissioners for England that the lands and hereditaments hereinafter described may, to the permanent advantage of the estate or endowment belonging to such rectory, be enfranchised and sold for the sum and in manner hereinafter mentioned: AND WHEREAS three months' notice in writing of such proposed enfranchisement and sale has been given to the Right Reverend the Lord Bishop of —, in whose diocese the said rectory is situate: AND WHEREAS under the powers enabling him in this behalf contained in the Act of Parliament passed, &c., and intituled, &c. (n), and of the several Acts therein referred to, the said A. B., with the approval of the said Ecclesiastical Commissioners testified as hereinafter is mentioned, and also with the consent and approval of the said C. D. as the patron of the said rectory, hath agreed with the said E. F. for the enfranchisement and sale of the lands and here-

ENFRANCHISE-
MENT WHERE
CESTUIS QUE
VIE ARE
TENANTS.

In reversion to
a grantee for
his own life
in trust for
equitable
owner.

Further grant
for lives in
trust on death
of two of the
lives.

That the rector
is the lord of
the manor.

That Eccle-
siastical Com-
missioners are
satisfied that
it is for the
advantage of
the rectory to
enfranchise.

That notice
has been given
to the bishop.

Agreement by
rector with
consent of
Ecclesiastical
Commissioners
and patron to
enfranchise.

(n) 24 & 25 Vict. c. 105.

ENFRANCHISE-
MENT WHERE
CESTUIS QUE
VIE ARE
TENANTS.

Consideration.

The rector,

with such
consent and
approval as
aforesaid,

enfranchises
parcels to
grantee to use
of *cestuis que
vie* for their
lives, in trust
for the equit-
able owner;
and after
death of the
survivor of
cestuis que vie,
to use of
equitable
owner in fee.
To the intent
that copyhold
tenancy be
extinguished.

Covenant by
rector against
incumbrances.

ditaments hereinafter described for the sum of £— : NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement in this behalf and in consideration of the sum of £—, paid by the said A. B. into the Bank of England, to the account of the Ecclesiastical Commissioners for England, by their direction (the receipt whereof is testified by the memorandum indorsed thereon, and the payment whereof the Ecclesiastical Commissioners hereby acknowledge), the said A. B. doth hereby, in pursuance and exercise of the power for this purpose contained in the said Act, and of all other powers (if any) enabling him in this behalf, and with the consent and approval of the said Ecclesiastical Commissioners (testified by their being parties to and executing these presents), and also with the consent and approval of the said C. D. as the patron of the said rectory, testified by his being a party to and executing these presents, enfranchise, and convey unto the said E. F., ALL, &c. (*parcels*): To HOLD the same unto the said E. F. in fee simple, To the use of the said L. M., N. O., and P. Q., for their respective lives in succession according to the order of their names in the several copyhold grants hereinbefore recited, Nevertheless in trust for the said E. F., his heirs and assigns, and to be surrendered or conveyed as he or they shall direct (*o*), And from and after the death of the last survivor of them the said L. M., N. O., and P. Q., To the use of the said E. F. in fee simple, to the intent that immediately upon the execution of these presents, the copyhold tenure of the said premises, and all rents, fines, heriots, suits, services, and rights incident thereto, may be extinguished: AND THE SAID A. B. hereby covenants with the said E. F. and his heirs, that the said A. B. hath not executed or done or knowingly been party or privy to any deed or thing whereby the hereditaments and premises hereby enfranchised and conveyed, or any part thereof, are, is, or may be impeached, charged, affected, or incumbered in title, estate, or otherwise, or whereby the said A. B. is in anywise hindered from enfranchising and conveying the said hereditaments and premises in manner aforesaid.

IN WITNESS, &c.

(*o*) It will be observed, that under an enfranchisement taken in this form the legal estate will be vested in the old *cestuis que vie* during their lives, which legal estate will have to be got in by a separate deed.

No. CXXVIII.

DEED of ENFRANCHISEMENT of COPYHOLDS for LIVES
under similar circumstances as last Precedent. (Another form.)

ENFRANCHISE-
 MENT OF
 COPYHOLDS FOR
 LIVES.
 (Another
 Form.)

THIS INDENTURE (*same parties and recitals as in last Precedent*): AND WHEREAS it has been arranged that the said enfranchisement and sale shall be carried into effect in manner following (that is to say), that the said L. M., N. O., and P. Q. shall in the first place surrender the said hereditaments to the said A. B. as lord of the said manor, so as to extinguish the copyhold tenure thereof, and that thereupon the said A. B. shall grant the same hereditaments as freehold to the use of the said E. F., in fee simple, in the manner hereinafter expressed: AND WHEREAS in part pursuance of the said arrangement the said L. M., N. O., and P. Q. have by the direction of the said E. F., and before the execution of these presents, surrendered into the hands of the said A. B., as lord of the said manor out of Court, the hereditaments hereinafter described with their appurtenances, To the intent that the copyhold tenure thereof may be extinguished: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement in this behalf, and in consideration, &c. (*as in last Precedent*), the said A. B. doth by these presents, in pursuance, &c., and with the consent, &c. (*as in last Precedent*), convey unto the said E. F. (*parcels*): To HOLD the same unto and to the use of the said E. F. in fee simple. (*Covenant by A. B. that he has done no act whereby he is prevented from conveying, supra, p. 402.*)

Recite
 arrangement
 how enfran-
 chisement
 should be
 carried into
 effect.
 Surrender to
 lord that copy-
 hold tenure
 may be
 extinguished.

Lord, with the
 consent of the
 Ecclesiastical
 Commissioners
 and patron,
 conveys
 parcels to
 purchaser.

IN WITNESS, &c.

No. CXXIX.

RELEASE OF
EXECUTORY
DEVISE.RELEASE of an EXECUTORY DEVISE to the OWNER of the
FIRST ESTATE.

Parties. THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*releasor*), of the one part, and C. D., of, &c. (*releasee*), of the other part: WHEREAS G. H., late of, &c., made his will, dated, &c., and thereby devised all his estates, lands, and hereditaments, situate, &c., unto and to the use of the said C. D., his heirs and assigns for ever: but in case the said C. D. should die without leaving lawful issue living at his decease (*p*), then the said testator devised his estates, lands, and hereditaments unto and to the use of the said A. B., his heirs and assigns, for ever (*death of G. H., and probate of his will*): AND WHEREAS the said C. D. hath agreed with the said A. B. for the absolute purchase of all the interest of the said A. B. in the said estates, lands, and hereditaments at — aforesaid, devised by the said recited will of the said G. H. to the uses and in manner aforesaid, at the price of £—: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration, &c. (*the receipt, &c.*), the said A. B., as beneficial owner, hereby releases and confirms unto the said C. D. ALL the estates, lands, hereditaments, and premises situate as aforesaid, so devised by the said will of the said G. H. to the uses and in manner aforesaid, To HOLD the same unto and to the use of the said C. D., in fee simple; To the intent that he and they may hold, retain, and enjoy the same, free from the aforesaid executory devise or limitation over to the said A. B., and from all other claims and demands whatsoever of him the said A. B. in respect thereof.

Recite will devising estates to purchaser in fee, but in case he should die without leaving issue, to the vendor.

Agreement for purchase.

Release of parcels.

To purchaser in fee free from executory devise.

IN WITNESS, &c.

Restriction on
executory
limitations.

(*p*) By the Conveyancing Act, 1882, s. 10, it is provided, with respect to instruments coming into operation after the 31st December, 1882, that where there is a person entitled to land for an estate in fee, or for a term of years absolute or determinable on life, or for term of life, with an executory limitation over on default or failure of all or any of his issue, whether within or at any specified period of time or not, that executory limitation shall be or become void and incapable of taking effect, if and as soon as there is living any issue who has attained the age of twenty-one years of the class on default or failure whereof the limitation over was to take effect.

No. CXXX.

CONVEYANCE of the BENEFIT of an EXECUTORY DEVISE
to a PURCHASER (q).GRANT OF AN
EXECUTORY
DEVISE TO A
PURCHASER.THIS INDENTURE, made the — day of —, BETWEEN Parties.
A. B. of, &c. (*venditor*), of the one part, and C. D. of, &c. (*pur-*chaser), of the other part: WHEREAS (*Recite will creating executory*
devise, and death of testator and probate of his will, supra, p. 404): Recite will
creating exe-AND WHEREAS the said A. B. hath agreed to sell all his estate and Agreement for
sale.interest under the said will in the hereditaments hereinafter
described (which hereditaments form part of the real estate
devised by the said will) to the said C. D. at the price of £—:NOW THIS INDENTURE WITNESSETH, that in con-
sideration, &c. (*the receipt, &c.*), the said A. B., as beneficial
owner, hereby conveys unto the said C. D. ALL the estate,
right, and interest of him the said A. B., under or by virtue of
the said recited will in and to the hereditaments hereinafter
described, namely: ALL, &c. (*here describe parcels*), To HOLD the
same unto and to the use of the said C. D. in fee simple.Vendor
conveys all his
estate and
interest in the
hereditaments
under will.

IN WITNESS, &c.

(q) By the 8th section of the 8 & 9 Vict. c. 106, all contingent, executory Contingent
and future interests in tenements or hereditaments of any tenure are dis- estates.
posable by deed.The 8th section of the same Act provides that a contingent remainder Contingent
shall not be defeated by the forfeiture, surrender, or merger of the pre- remainders.
ceding estate of freehold; so that as to contingent remainders created
before the passing of the 40 & 41 Vict. c. 33, its failure depends on the
particular estate of freehold naturally determining during the contin-
gency, or on the non-happening of the contingent event. But it is pro-
vided by the last-mentioned Act, that every contingent remainder created
after the passing of that Act shall, in the event of the particular estate
determining before the contingent remainder vests, be capable of taking
effect as if it had originally been created as a springing or shifting use or
executory devise or other executory limitation.

No. CXXXI.

CONVEYANCE
OF FREEHOLDS
AND
DECLARATION
OF TRUST OF
COPYHOLDS BY
TRUSTEE.

CONVEYANCE *of* FREEHOLDS *and* DECLARATION *of*
TRUST *of* COPYHOLDS *which had been* PURCHASED *in*
the NAME of a TRUSTEE for a COMPANY (by INDORSE-
MENT).

Parties.

Recite
purchase of
freeholds and
copyholds in
the name of a
trustee.

Agreement to
execute
assurance and
declaration of
trust.

Conveyance
of freeholds to
company.

Declaration
of trust as to
copyholds.

THIS INDENTURE, made the — day of —, BETWEEN the within-named A. B. of the one part, and the — Company of the other part: WHEREAS the freehold and copyhold hereditaments comprised in the within-written indenture were purchased by the said A. B. as agent for and on behalf of the said — Company, and the within-mentioned purchase-money of £— was paid by the said A. B. out of the proper moneys of the said — Company: AND WHEREAS, at the request of the said — Company, the said A. B. hath agreed to execute to the said — Company such assurance of the said freehold hereditaments, and to execute such declaration of trust as to the said copyhold hereditaments, as are hereinafter contained: NOW THIS INDENTURE WITNESSETH, that in pursuance of the aforesaid agreement, and in consideration of the premises, the said A. B., as trustee, hereby conveys unto the said — Company ALL the freehold messuages, lands, hereditaments, and premises comprised in and conveyed by the within-written indenture, or expressed so to be: To HOLD the same unto and to the use of the said — Company, their successors and assigns for ever: AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the aforesaid agreement, and in consideration of the premises, it is hereby declared that the said A. B., his heirs and assigns, shall henceforth stand seised of and interested in all the copyhold hereditaments and premises in the within-written indenture recited to have been surrendered to the use of the said A. B. as within is mentioned, IN TRUST for the said — Company, their successors and assigns for ever (r).

IN WITNESS, &c.

(r) The lord of a manor is not bound to admit a corporation as tenant, because by so doing he would lose the fines, &c. on descents. Hence, when a corporation buys copyholds, the legal estate must be taken in the name of a trustee.

No. CXXXII.

GRANT of a RIGHT of WAY (s).

GRANT OF
RIGHT OF WAY.

THIS INDENTURE, made the — day of —, BETWEEN Parties.
 A. B., of, &c. (*grantor*), of the one part, and C. D., of, &c. (*grantee*), of the other part: WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B., as beneficial Grant of right of way,
 owner, hereby grants unto the said C. D., his heirs and assigns, that it shall be lawful for the said C. D., his heirs and assigns, as owner or owners for the time being of the piece of land, situate in the parish of —, in the county of —, delineated and coloured pink on the map drawn in the margin of these presents, and his and their tenants and servants, and all other persons authorized by him or them, from time to time, and at all times hereafter, at his and their will and pleasure, to pass and repass, with or without horses, carts and carriages of all descriptions, over and along a road leading from — turnpike road to the said piece of land, through certain pieces of land of the said A. B., situate in the said parish, delineated and coloured green on the said map, and the course of which road is shown on the said map by a dotted line between the points marked A and B thereon: To THE END AND INTENT, that the right of way hereby granted shall be for ever hereafter appurtenant to the said piece of land coloured pink on the said map for all purposes connected with the use, occupation and enjoyment of the said piece of land, and of the farm and lands of the said C. D. adjoining thereto, and accessible through the same by means of the same road: AND ALSO that it shall be lawful to purchaser in fee.
 for the said C. D., his heirs and assigns, owner or owners for the time being as aforesaid, from time to time, and at all times hereafter, to repair and amend the said road, the right of way over which is hereinbefore granted, in order that the said road Power to purchaser to repair road.

(s) Rights of way are either in gross or appurtenant. A right of way in gross cannot be assigned; a right of way appurtenant to any particular land must be connected with the use and enjoyment of that land, and cannot be granted for persons wholly unconnected with it. (*Ackroyd v. Smith*, 19 L. J. C. P. 315. See also *Thorpe v. Brumfitt*, L. R. 8 Ch. 850.)

GRANT OF
RIGHT OF WAY.Vendor to
contribute
towards
expense of
repair if he
uses same.

may be kept in good repair and condition, and that the same be at all times fit and proper for answering the purposes intended by these presents (t) : PROVIDED ALWAYS, that if the said A. B., his heirs or assigns, owners of the land traversed by the said road, shall use the same, then and in such case he or they shall contribute a fair and reasonable proportion of the cost of keeping the same in repair, and if any difference shall arise as to the amount which ought to be so contributed, the same shall be referred to two arbitrators, one to be appointed by each party, and such reference shall be deemed an arbitration within the "Common Law Procedure Act, 1854," and shall be made a rule of Her Majesty's High Court of Justice (u).

IN WITNESS, &c.

No. CXXXIII.

OF FREEHOLDS
AND RIGHT
OF WAY OVER
OTHER LAND.CONVEYANCE and GRANT of FREEHOLD LAND and
a RIGHT OF WAY over OTHER LAND.

Parties.

Consideration.

Vendor grants
lands and
right of way
over other
land, to pur-
chaser in fee.

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c. (vendor), of the one part, and C. D. of, &c. (purchaser), of the other part, WITNESSETH, that in consideration of the sum of £— as purchase-money to the said A. B. paid by the said C. D. on or before the execution of these presents (the receipt, &c.), THE said A. B., as beneficial owner, hereby conveys and grants unto the said C. D.: FIRST, ALL THAT &c. (parcels): AND, SECONDLY, FULL RIGHT and liberty for the said C. D., his heirs and assigns, owner or owners for the time being of the land hereinbefore described, and his and their tenants and servants, and all other persons authorized in that behalf by him or them, from time to time, and at all times hereafter at his and their will and pleasure, for all purposes

(t) The grantee of a right of way is under no obligation to repair the road; but if he wishes to use it, he must do so. (Per Coleridge, J., in *Duncan v. Louch*, 14 L. J. Q. B. 187.)

(u) See *supra*, p. 126, note.

connected with the use and enjoyment of the said land, to pass and repass, with or without horses, cattle, and other animals, carts, waggons, and carriages, in, along, and over the roadway now making in and through the piece of land situate, &c., formerly known as —, and now known as —, and the site and course of which roadway is shown in the plan endorsed on these presents, and therein coloured —: To HOLD the same unto and to the use of the said C. D., in fee simple: AND IT IS HEREBY declared that the right of way hereinbefore granted shall be used and enjoyed by the said C. D., his heirs and assigns, in common with the said A. B., his heirs and assigns, and the expense of keeping the said road in repair shall be borne by the said C. D., his heirs and assigns, and the said A. B., his heirs and assigns, in equal moieties (x).

IN WITNESS, &c.

OF FREEHOLDS
AND RIGHT
OF WAY OVER
OTHER LAND.

No. CXXXIV.

CONVEYANCE of a piece of LAND to the Use that VENDOR may have a RIGHT OF WAY over it, and subject thereto to the Use of PURCHASER in fee simple (y).

CONVEYANCE
WITH
RESERVATION
OF RIGHT OF
WAY.

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c. (vendor), of the one part, and C. D. of, &c. (purchaser), of the other part, WITNESSETH, that in consideration, &c. (the receipt, &c.), the said A. B., as beneficial owner, hereby conveys unto the said C. D. ALL that piece of land situate in the parish of —, in the county of —, being part of a field known as — field, the whole of which field is delineated in the map drawn in the margin of these presents, the part thereof intended to be hereby conveyed being coloured pink on the said map, and the remainder thereof being coloured yellow on the said map: To HOLD the same unto the said C. D.

Parties.

Conveyance
by vendor of
land part of a
field.

(x) It seems desirable to state in the deed who is to keep the road in repair. This will, of course, depend on the parties who are to use it, and on what may happen under the circumstances to be the most convenient arrangement.

(y) See sect. 62 of the Conveyancing Act, 1881.

CONVEYANCE
WITH
RESERVATION
OF RIGHT OF
WAY.

To use that
vendor as
owner of the
remainder of
the field may
have right of
way, and
subject
thereto to use
of purchaser
in fee.

in fee simple, To THE USE that the said A. B., his heirs and assigns, as owner or owners for the time being of the land coloured yellow in the said map, and his and their tenants and servants, and all other persons authorized by him or them, shall for ever hereafter have a right of way with or without horses, carts, and carriages, over the said land hereby conveyed by means of the road which traverses the said land, between the points marked A and B in the said map, he and they paying a fair proportion of the expense of keeping the said road in repair and subject to the said right of way, To THE USE of the said C. D. in fee simple.

IN WITNESS, &c.

No. CXXXV.

OF FREEHOLDS
TO PUR-
CHASER WHO
COVENANTS NOT
TO BUILD, ETC.

CONVEYANCE of FREEHOLDS to a PURCHASER *who*
COVENANTS NOT to BUILD or to allow any TREES or
SHRUBS to EXCEED a certain HEIGHT.

Parties.

Agreement for
sale.

Considera-
tion.

Vendor
conveys
hereditaments
to purchaser
in fee.

Covenant by
purchaser not
to build on the
land or to
allow trees,
&c., to grow
beyond certain
height.

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c. (*rendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: WHEREAS the said A. B. hath agreed to sell the hereditaments hereinafter described to the said C. D. in consideration of the sum of £—, and of the said C. D. entering into the covenants hereinafter on his part contained: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of, &c. (*the receipt, &c.*), and in consideration of the covenants on the part of the said C. D. hereinafter contained, the said A. B., as beneficial owner, hereby conveys unto the said C. D. ALL, &c. (*parcels*), To HOLD the same unto and to the use of the said C. D. in fee simple: AND IN PURSUANCE of the aforesaid agreement in this behalf, the said C. D., to the intent that the burden of this covenant may run with the land hereby conveyed, and that the benefit thereof shall run with the land of the said A. B. adjoining to the land hereby conveyed, hereby covenants with the said A. B., his heirs and assigns, that the said C. D., his heirs or assigns, will

not at any time hereafter erect or permit to be erected any building or wall (z) on the said piece or parcel of land hereby conveyed, or any part thereof, and will not at any time hereafter permit any trees or shrubs for the time being growing in or upon the said piece or parcel of land to exceed ten feet in height from the ground, having regard always to the present level of the said piece or parcel of land, and will at all times, by cutting the same or otherwise, prevent such trees and shrubs from exceeding the aforesaid height.

IN WITNESS, &c.

OF FREEHOLDS
TO PUR-
CHASER WHO
COVENANTS NOT
TO BUILD, ETC.

No. CXXXVI.

CONVEYANCE of a PLOT of LAND, part of a BUILDING ESTATE. RESTRICTIVE COVENANTS by PURCHASER as to BUILDINGS and otherwise (a).

OF PLOT OF
LAND SUBJECT
TO RESTRICTIVE
COVENANTS.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part, WITNESSETH that in consideration, &c., the said A. B., as beneficial owner, hereby conveys unto the said C. D. ALL that plot or parcel of land situate, &c., which, with the dimensions and abutments thereof, is delineated and shown on the map drawn in the margin hereof and thereon coloured pink, which plot or parcel of land is part of a building estate known as the — estate, To HOLD the same unto and to the use of the said C. D. in fee simple: AND the said C. D. hereby covenants with the said A. B., his heirs and assigns, as owner or owners for the time being of the remainder of the said — estate, of which the land hereby conveyed is part, that he the said C. D., his heirs and assigns, will not without the consent in writing of the said A. B., his heirs or assigns, erect upon the plot of land hereby conveyed any house or building which shall be nearer to the road in front of the same than is indicated by the line marked on the said map, "building line": AND

Parties.

Conveyance
by vendor to
purchaser.

Restrictive
covenants by
purchaser.

(z) See *Bowes v. Law*, L. R. 9 Eq. 636.

(a) See the observations on restrictive covenants, at p. 200, *supra*.

**OF PLOT OF
LAND SUBJECT
TO RESTRICTIVE
COVENANTS.**

Proviso that
benefit of
covenant shall
not pass to
future pur-
chasers of
other plots,
unless so
declared in
conveyance.

ALSO (*insert any other restrictive covenants which may be agreed on*),
[PROVIDED ALWAYS that if and whenever the said A. B., his
heirs or assigns, shall sell a plot of land being a part but not
the whole of the said estate then remaining vested in him or
them, the right to enforce the said covenants in respect of the
plot of land so sold shall not pass to the purchaser unless it shall
be declared in the deed of conveyance that it is intended to pass
thereby (b).]

IN WITNESS, &c.

No. CXXXVII.

**OF PLOT OF
LAND SUBJECT
TO RESTRICTIVE
COVENANTS.**

CONVEYANCE of a PLOT of LAND, *part of a BUILDING
ESTATE—MUTUAL COVENANTS by VENDOR and PUR-
CHASER, with respect to BUILDING, &c., on such PLOT,
and on the PLOTS sold or intended to be sold to other
purchasers.*

Parties.

THIS INDENTURE, made the — day of —, BETWEEN
A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c.
(*purchaser*), of the other part, WITNESSETH that, in con-
sideration, &c., the said A. B., as beneficial owner, hereby
conveys unto the said C. D., ALL THAT plot or parcel of land
situate in the parish of —, in the county of —, containing
— or thereabouts, which, with the dimensions and abutments
thereof, is delineated and shown on the map drawn in the
margin of these presents, and is thereon coloured pink, To HOLD
the same unto and to the use of the said C. D. in fee simple.
(*Acknowledgment by A. B. of right of C. D. to production of
documents of title mentioned in schedule, and undertaking by him
for safe custody thereof, supra, p. 226*): AND WHEREAS the plot
of land hereby conveyed is part of an estate of the said A. B.,

**Conveyance of
plot of land to**

**purchaser in
fee.**

**Recital that
land is part of
building
estate,**

(b) This proviso is suggested in order to prevent any question as to the
devolution of the benefit of the covenants on purchasers of other plots.
It is assumed in this case that it would be inconvenient that the vendor
should deprive himself of the right to release or dispense with the
covenant.

divided into plots for building purposes, some of which plots have been sold and the others are intended to be sold as and when purchasers can be found, and the said building estate is delineated on the said map, the plot of land hereby conveyed being coloured pink thereon, and the remainder of the estate being coloured yellow thereon: AND WHEREAS all the said plots have been sold and are intended to be sold respectively, subject to the conditions and with the privileges specified in the schedule to these presents, and all the conveyances which have been hitherto executed by the said A. B. to purchasers have contained covenants similar to those hereinafter contained: AND WHEREAS the parties hereto have agreed to enter into the following covenants: NOW IT IS HEREBY MUTUALLY COVENANTED AND AGREED, by and between the parties hereto, that all the conditions and privileges specified and set forth in the schedule hereto shall be for ever annexed as well to the plot of land hereby conveyed as also to all other the plots of land part of the said building estate shown on the said map, so far as the same are applicable thereto respectively, and shall be for ever hereafter respectively observed and enjoyed by the owners for the time being of the said plots respectively, and be mutually enforceable by and against the said owners respectively, and that all future conveyances to be executed by the said A. B. of the plots of land not already sold and conveyed as aforesaid shall contain covenants for giving effect to the said conditions and privileges similar to those contained in these presents (c): AND IT IS HEREBY DECLARED that the foregoing covenants shall, both as regards the liability thereunder and the benefit thereof, run with the land with reference to which they are entered into so far as legally can be, but neither the said A. B., nor the said C. D., nor any present or future owner of any plot of land affected by such covenants shall be personally liable thereunder, after he has parted with the same plot of land.

OF PLOT OF
LAND SUBJECT
TO RESTRICTIVE
COVENANTS.

and that plots
are sold sub-
ject to and
with condi-
tions and
privileges.

Mutual cove-
nants that
conditions and
privileges shall
be annexed to
all the plots.

But owner not
to be person-
ally liable after
parting with
land.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

(c) See the observations on restrictive covenants, *supra*, p. 200. See also *Whatman v. Gibson*, 9 Sim. 196.

No. CXXXVIII.

DEED OF
MUTUAL
COVENANTS BY
PURCHASERS AS
TO BUILDINGS,
ETC.

DEED of MUTUAL COVENANTS by PURCHASERS of LOTS as
to BUILDINGS and for INDEMNITY against a RENT.

Recite that
vendor had
put up land
for sale by
auction.

Condition that
purchasers
should execute
deed of cove-
nant.

Some lots sold
at auction,
and intention
of vendor to
sell remaining
lots.

Each pur-
chaser cove-
nants to
observe
stipulations
hereinafter
expressed.

THIS INDENTURE, made the — day of —, BETWEEN the several persons named and described in the schedule hereunder written, and whose hands and seals are hereunto subscribed and affixed (*purchasers*), of the first part, and A. B., of, &c. (*vendor*), of the second part: WHEREAS the said A. B., being seised in fee simple of a piece of freehold land situate, &c., which piece of land is delineated and coloured pink on the plan hereunto annexed, lately put up the said piece of land for sale by public auction in lots according to the said plan: AND WHEREAS it was one of the conditions of the said sale that the several purchasers should execute a deed of covenant for the observance of the several stipulations hereinafter expressed: AND WHEREAS some of the said lots were sold at the said auction, and the said A. B. intends to sell the remaining lots either by public auction or private contract, as opportunities occur, subject to the like stipulations: AND WHEREAS it is intended that as the several lots are sold and the purchases thereof respectively are completed, the names and descriptions of the several purchasers and the numbers of the lots purchased by them respectively shall be inserted in the schedule hereunder written, and that they shall respectively execute these presents, opposite to their respective names in the said schedule. NOW THIS INDENTURE WITNESSETH that in consideration of the premises, each of the several persons parties hereto of the first part, as to the lot purchased by him and with intent to bind all persons in whom the same lot shall for the time being be vested, but so as not to be personally liable under this covenant after he has parted with the said lot, hereby covenants with the others of them and their respective heirs and assigns, and also as a separate covenant with the said A. B., his heirs and assigns, that they the said covenanting persons respectively and their respective heirs and assigns, shall and will observe and perform the several stipula-

tions hereinafter expressed and set forth, so far as the same are or ought to be observed and performed by them respectively (that is to say) :

1. Any houses or buildings erected on the said lots shall be erected so that the general line of the frontages shall not approach nearer to the road than the distance indicated on the said plan by the dotted line thereon, marked "building line," which line is — feet from the centre of the said road, except that open porticoes to the hall doors of any of the said houses may project any distance not exceeding — feet, and any bow window to any of the said houses may project any distance not exceeding — feet from the said building line.

2. The trade or business of a licensed victualler, or seller of beer, wine, or spirits, shall not be carried on upon any of the said lots (except lot —), or at or upon any building to be erected thereon. (*Insert any other stipulations agreed on.*)

3. The annual sum of £—, which is now charged upon the said lots, as well as on other property of the said A. B. under an indenture, dated, &c., shall be henceforth exclusively charged on lot —. And if the owner or owners, or occupier or occupiers, of any other of the lots or any other property of the said A. B. charged with the said annual sum shall at any time be required to pay the same or any part thereof, and shall pay the same accordingly, then and in every such case it shall be lawful for the person or persons making such payment into and upon the said lot —, or any part thereof, to enter and distrain for the sum or sums of money so paid by him or them as aforesaid, and to dispose of the distress or distresses then and there found according to law, as landlords may for rent reserved upon leases, to the intent that he or they may be thereby fully repaid and satisfied all such sum or sums of money as aforesaid, and also all costs, charges, and expenses incurred by him or them by reason of the non-payment thereof by the owner or owners of the said lot.

4. The above stipulations shall be binding on the several purchasers who have completed their purchases and executed these presents, notwithstanding that some of the lots affected thereby may for the time being remain unsold.

IN WITNESS whereof the parties hereto have hereunto set their hands and seals on the day and year first above written, or on

DEED OF
MUTUAL
COVENANTS BY
PURCHASERS AS
TO BUILDINGS,
ETC.

Houses
erected on
lots not to
approach road
nearer than
particular
distance.

Trades of
licensed
victualler, &c.,
not to be
carried on.

As to annual
sum charged
on lots.

Stipulations to
be binding on
purchasers
who have
completed.

DEED OF
MUTUAL
COVENANTS BY
PURCHASERS AS
TO BUILDINGS,
ETC.

the day and year set opposite to their respective signatures in the schedule hereto.

THE SCHEDULE ABOVE REFERRED TO.

Name and Description of Purchaser.	No. of Lot.	Signature.	Seal.	Date of Signature.	Witness.

No. CXXXIX.

DEED OF
MUTUAL
COVENANTS ON
SALE OF
BUILDING
PLOTS.

GENERAL DEED of MUTUAL COVENANTS by PURCHASERS and VENDOR on the SALE of BUILDING PLOTS (d).

Parties.

Recite that vendor has laid out land for sale in plots.

That some of plots have been sold, and

Notice to be endorsed on deed of covenant on sale of building plots.

THIS INDENTURE, made the — day of —, BETWEEN the several persons named and described in the schedule hereunder written, and whose hands and seals are hereunto subscribed and affixed (*purchasers*), of the first part; and A. B., of, &c. (*vendor*), of the second part. WHEREAS the said A. B. being seised in fee simple of land in the parish of —, in the county of —, has laid out the same for sale in plots for building purposes according to the plan hereunto annexed, in which plan the plots are numbered 1 to — inclusive: AND WHEREAS, some of the plots have been sold to the several persons parties

(d) Notice of this deed should be endorsed on one of the principal title deeds, so that any future purchaser from the vendor may have notice of it. In the absence of such notice he would not be affected by the covenants. On any future sale by the vendor of any plot of land affected by the covenants, the conveyance should be made expressly subject to them, thus:— “To hold the same unto and to the use of the (*purchaser*) in fee simple, subject, nevertheless, to and with the benefit of the covenants as to buildings and otherwise contained in an indenture, dated, &c., and made, &c. (*date and parties*), so far as the same affect the land hereby conveyed.”

hereto of the first part, and the said A. B. intends to sell the remaining plots as opportunities offer: AND WHEREAS, the Nos. of the plots sold as aforesaid (such Nos. corresponding to those in the said plan), are set forth in the schedule hereunder written opposite to the names of the several purchasers thereof: AND WHEREAS, upon the treaty for the said sales it was agreed that the said several purchasers and the said A. B. should enter into the covenants hereinafter contained. NOW THIS INDENTURE WITNESSETH, that in consideration of the premises each of them the said several persons parties hereto of the first part as to the plot of land purchased by him, and with intent to bind all persons in whom the same plot of land shall for the time being be vested, but so as not to be personally liable under this covenant after he has parted with the same plot of land hereby covenants with the others of them and their respective heirs and assigns, and also as a separate covenant with the said A. B., his heirs and assigns: AND the said A. B., as to the remaining plots of land shown on the said plan and with intent to bind all persons in whom the said plots of land shall for the time being be vested, but so as not to be personally liable under this covenant after he has parted with the same plots of land respectively, hereby covenants with the parties hereto of the first part respectively and their respective heirs and assigns that they the said covenanting persons respectively and their respective heirs and assigns will henceforth observe and perform the stipulations hereinafter expressed so far as the same affect the plots of land respectively (that is to say): (*Set out stipulations in numbered paragraphs*).

DEED OF
MUTUAL
COVENANTS ON
SALE OF
BUILDING
PLOTS.

intention of
vendor to sell
remainder.
Agreement
that pur-
chasers and
vendor should
enter into
covenants.
Each pur-
chaser and
vendor
mutually
covenant
to observe
stipulations
hereinafter
expressed.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

Name.	Address.	Quality.	No. of Plot.	Signature.	Seal.	Witness.

No. CXL.

DEED OF
CONFIRMATION.

DEED of CONVEYANCE of a PIECE of LAND which had
been unintentionally omitted in the Deed conveying the
BULK of the PROPERTY (by Indorsement on Principal
Conveyance).

Parties.

Recite omis-
sion of land,
and agreement
to execute
present
assurance.

Conveyance
of land.

THIS INDENTURE, made the — day of —, BETWEEN
the within-named A. B. (*vendor*), of the one part, and the within-
named C. D. (*purchaser*), of the other part: WHEREAS, prior to
the execution of the within-written indenture, the said A. B.
agreed to sell to the said C. D. as well the hereditaments
hereinafter described, as also the hereditaments comprised in
the said indenture, at the price of £—, but by an unin-
tentional omission the hereditaments hereinafter described
are not described or referred to in the said indenture, and
for the purpose of rectifying and supplying such omission, the
said A. B. hath agreed to execute this present deed: NOW
THIS INDENTURE WITNESSETH, that in pursuance of
the aforesaid agreement, and in consideration of the premises,
the said A. B., as beneficial owner, hereby conveys unto the said
C. D. ALL, &c. (*parcels*): To HOLD the same unto and to the
use of the said C. D. in fee simple.

IN WITNESS, &c.

No. CXLI.

RELEASE OF
RENT-CHARGE
TO OWNER OF
LAND.

RELEASE of RENT-CHARGE in fee, and BUILDING and
other COVENANTS, to the OWNER in fee of the FREE-
HOLDS out of which the rent is PAYABLE.

Parties.

Recite grant
of land in fee
subject to

THIS INDENTURE, made the — day of —, BETWEEN
A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*pur-
chaser*), of the other part. (*Recite conveyance of land by A. B. to
C. D. in fee subject to the limitation to A. B. of a yearly rent-charge*)

of £5, and to covenants by C. D. as to building and otherwise, and that C. D. has erected a dwelling-house on the land, see *supra*, pp. 361, 362): AND WHEREAS the said C. D. has agreed to purchase from the said A. B. such release as is hereinafter expressed, at the price of £—: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B., as beneficial owner, hereby conveys and releases unto the said C. D., in fee simple: THE SAID yearly rent of £—, limited to the said A. B. in fee simple by the hereinbefore recited indenture, and all powers and remedies for recovering the same when in arrear, and all covenants and conditions contained in the said indenture, and on the part of the said C. D., his heirs and assigns, to be observed and performed: TO THE END AND INTENT that the said yearly rent shall henceforth merge and be extinguished in the freehold and inheritance of the hereditaments comprised in the said indenture, and that the said covenants and conditions shall cease and determine.

IN WITNESS, &c.

RELEASE OF
RENT-CHARGE
TO OWNER OF
LAND.

yearly rent-charge.

Agreement
for release
of yearly
rent-charge.

Release of
rent-charge to
the owner in
fee of land,

to the intent
that same may
merge in the
inheritance.

No. CXLII.

CONVEYANCE of FREEHOLDS CHARGED with an ANNUITY. *The ANNUITANT JOINS to RELEASE the PROPERTY from the CHARGE (e).*

CONVEYANCE
OF FREEHOLDS
CHARGED WITH
ANNUITY.

THIS INDENTURE, made the — day of —, BETWEEN Parties.
A. B., of, &c. (*vendor*), of the first part, C. D., of, &c. (*annuitant*),
of the second part, and E. F., of, &c. (*purchaser*), of the third
part. WHEREAS, by an indenture dated the — day of —, and made between the said C. D. of the one part, and the said A. B. of the other part, in consideration of the sum of £— to the said C. D. paid by the said A. B., and of the annual sum of £15 thereafter limited and secured to the said C. D., the

Recite conveyance of freeholds in consideration of gross sum and annuity to vendor.

(e) The succession duty which will become payable on the death of the annuitant will be a charge on the property, unless it is commuted and previously paid.

**CONVEYANCE
OF FREEHOLDS
CHARGED WITH
ANNUITY.**

Agreement
for sale by
purchaser
under above
conveyance.

Annuitant
agrees to
release from
annuity.

Consideration.

Vendor
conveys, and
annuitant
releases the
property, to
the purchaser
in fee dis-
charged from
annuity.

said C. D. conveyed the hereditaments hereinafter described unto the said A. B. in fee simple, To the use that the said C. D. should thenceforth during his life receive the annual sum or yearly rent-charge of £15 to be issuing out of the said hereditaments, and to be paid as therein mentioned, and subject as aforesaid, to the use of the said A. B. in fee simple: AND WHEREAS the said A. B. has agreed to sell to the said E. F. the hereditaments hereinafter described, at the price of £——. AND WHEREAS the said C. D. has consented to join in these presents for the purpose of releasing the said hereditaments from the said annual sum or yearly rent-charge as hereinafter mentioned. NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. paid by the said E. F. on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges), the said A. B., as beneficial owner, hereby conveys, and the said C. D., as beneficial owner of the said annuity or yearly rent-charge, hereby releases unto the said E. F. ALL, &c. (*parcels*), To HOLD the same unto and to the use of the said E. F. in fee simple, absolutely discharged from the said annuity or yearly rent-charge, and all powers and remedies for securing the same (*f*).

IN WITNESS, &c.

No. CXLIII.

**SURRENDER OF
LEASE TO
LESSOR.**

Parties.

SURRENDER of a LEASE to the LESSOR (*g*).

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*lessee*), of the one part, and C. D. of, &c. (*lessor*),

(*f*) This form may be easily adapted to the case of a freehold piece of ground which has been sold to the vendor, subject to the payment of a perpetual fee farm rent.

Assignments
of chattel
interests in
land, and
surrenders
required to be
in writing,

(*g*) By the 3rd section of the 8 & 9 Vict. c. 106, it is provided that an assignment of a chattel interest, not being copyhold, in any tenements or hereditaments, and a surrender in writing of an interest in any tenements or hereditaments, not being a copyhold interest, and not being an interest which might by law have been created without writing, shall be void at law unless made by deed. If such an assignment or surrender is made

of the other part (*Recite lease for thirty years to A. B.*): AND WHEREAS the rent and covenants reserved by and contained in the hereinbefore recited indenture of lease, and on the part of the said lessee to be paid, observed, and performed, have been duly paid, observed, and performed by the said A. B. up to the date of these presents: AND WHEREAS the said C. D. hath agreed to purchase from the said A. B. a surrender of the said premises at the price of £—: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B., as beneficial owner, hereby surrenders unto the said C. D. ALL the hereditaments and premises comprised in and demised by the said indenture of lease: To THE INTENT that the residue of the said term of thirty years created by the said indenture of lease, and all other the estate and interest of the said A. B. in the said premises under or by virtue of the said indenture, may be merged and extinguished in the reversion and inheritance of the same premises.

IN WITNESS, &c.

SURRENDER OF
LEASE TO
LESSOR.

Recite lease
and that rent
has been paid
to present
time.

Agreement to
surrender lease
to lessor.

Surrender of
premises to
lessor,

to the intent
that residue
of lease shall
merge in the
inheritance.

No. CXLIV.

ASSIGNMENT of GROWING CROPS of CORN and GRASS (*h*).

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: WHEREAS the said A. B. hath agreed to sell to the said C. D. the crops of corn and grass now growing on the pieces of land hereinafter described, and all

ASSIGNMENT
OF GROWING
CROPS.

Parties.

Agreement
for sale.

by writing under hand only for a valuable consideration, and the purchase-money is paid, it will be effectual in passing to the purchaser the equitable and beneficial interest, but not the legal estate; and if the consideration money or any part of it is not paid, it would operate as an ordinary contract for sale. The section refers only to surrenders required to be in writing. Therefore, surrenders which take effect by operation of law are not within the Act.

must be by
deed to pass an
interest at law.

(*h*) This deed must be registered under the Bills of Sale Act, 1878, so as to be good against a trustee in bankruptcy and execution creditors. (41 Vict. c. 31, s. 4.)

ASSIGNMENT OF GROWING CROPS.	the benefit and advantage thereof, at the price of £—— : NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (<i>the receipt, &c.</i>), the said A. B., as beneficial owner, hereby
Assignment of crops,	grants and assigns unto the said C. D. ALL the crops of corn and grass which are now growing, arising, and being on the several pieces or parcels of land hereinafter described, namely
with power to purchaser to enter on land to remove same.	(<i>here describe the lands specifically</i>): TOGETHER WITH FULL LIBERTY for the said C. D. and the servants, labourers, and other persons employed by him for that purpose, either with or without horses, carts, and carriages, from time to time, and at any time or times during the ensuing months of —— and ——, between the hours of —— in the morning and —— in the evening of each day, of the said months respectively, ex- cepting the Sundays which shall occur therein, to enter upon the said pieces or parcels of land respectively, or any part or parts thereof respectively, for the purpose of seeing the con- dition of the said crops, and for the purpose of reaping, mowing, and cutting the said crops of corn and grass respectively, and removing the same respectively, and also to do all such other acts and things as may be necessary or required for the purpose
To purchaser absolutely.	of obtaining the full benefit of these presents: To HOLD the same unto and to the use of the said C. D., absolutely. IN WITNESS, &c.

No. CXLV.

ASSIGNMENT OF BOND DEBT.	ASSIGNMENT of a BOND DEBT (<i>i</i>) by indorsement on the bond.
Parties.	THIS INDENTURE, made the —— day of ——, BETWEEN the within-named A. B. (<i>venditor</i>), of the one part, and C. D., of,
Legal right to chose in action passes on notice of assignment.	(<i>i</i>) Notice must be given of the assignment to the debtor, and from the date of such notice the assignment is effectual to pass the legal right to the bond and all legal remedies thereunder. A power of attorney is therefore unnecessary. (See 36 & 37 Vict. c. 66, s. 25, sub-s. 6; also Walker v. Bradford Old Bank, 12 Q. B. D. 511.)

&c. (*purchaser*), of the other part, WITNESSETH, that in consideration of the sum of £800, as purchase-money, to the said A. B. paid by the said C. D. on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges), the said A. B., as beneficial owner, hereby assigns unto the said C. D., THE principal sum of £1,000 secured by the within-written bond, and the sum of £—, now due for arrears of interest thereon, and all interest henceforth to become due for the same, and also the said bond and the full benefit and advantage thereof: To HOLD the same unto the said C. D., absolutely: AND the said A. B. hereby covenants with the said C. D., that the said principal sum of £1,000 now remains owing on the said bond together with the sum of £—, for arrears of interest thereon.

ASSIGNMENT OF
BOND DEBT.

Assignment of
bond debt.

Covenant by
vendor that
bond debt
remains due.

IN WITNESS, &c.

No. CXLVI.

ASSIGNMENT of a JUDGMENT DEBT.

ASSIGNMENT OF
JUDGMENT
DEBT.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part: WHEREAS the said A. B. on the — day of —, obtained a judgment in the High Court of Justice (Queen's Bench Division), against E. F., of, &c., for the sum of £—, and costs: AND WHEREAS the said sum of £— and costs still remain due on the security of the said judgment: AND WHEREAS the said A. B. hath agreed to sell to the said C. D. the said judgment debt and costs at the price of £—: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B., as beneficial owner, hereby assigns unto the said C. D., ALL THAT the said sum of £—, and also the said costs secured by the said recited judgment, and all interest now due and hereafter to become due for the same: AND ALSO the said judgment, and the full benefit and advantage thereof, and of all other secu-

Parties.

Recite
judgment.

That debt is
still owing.

Agreement for
sale of debt.

Witnessing
part.

Consideration.

Assignment
of debt, &c.,

and full
benefit of
judgment to
purchaser.

ASSIGNMENT OF
JUDGMENT
DEBT.

rities for the same sum, costs, and interest: To HOLD the same unto the said C. D., absolutely: AND the said A. B. hereby covenants with the said C. D. that the whole of the said sum of £—— remains owing on the said judgment.

IN WITNESS, &c.

No. CXLVII.

ASSIGNMENT OF
LETTERS
PATENT.

ASSIGNMENT of LETTERS PATENT (k).

Parties.

Recite grant
of letters
patent.

Agreement
for sale of
invention and
letters patent.

Assignment of
invention and
letters patent,

to purchaser
absolutely.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part: WHEREAS, by letters patent under the great seal of the United Kingdom of Great Britain and Ireland, dated the —— day of ——, 18—, and duly registered in the Patent Office, her Majesty granted unto the said A. B. her especial licence, full power, sole privilege and authority that the said A. B. by himself or his agents or licensees, and no others, might at all times thereafter during the term therein mentioned, make, use, exercise, and vend an invention for “improvements in sewing machines,” within the United Kingdom and the Isle of Man, and that the said A. B. should have and enjoy the whole profit and advantage accruing by reason of the said invention during the term of fourteen years from the date of the said letters patent: AND WHEREAS the said A. B. hath agreed to sell to the said C. D. the benefit of the letters patent, at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B., as beneficial owner, hereby assigns unto the said C. D., THE said letters patent, and all benefits, privileges, and advantages arising therefrom, including the right of applying for an extension of the term granted thereby: To HOLD the same unto the said C. D. absolutely.

IN WITNESS, &c.

(k) See 46 & 47 Vict. c. 57. This assignment should be registered in the Patent Office. (Sect. 23.)

No. CXLVIII.

GRANT of an exclusive LICENCE to use a PATENTED INVENTION within a limited district, in consideration of a ROYALTY. LICENCE TO USE A PATENT.

THIS INDENTURE, made the — day of —, BETWEEN Parties.
 A. B., of, &c. (*patentee*), of the one part, and C. D., of, &c. (*licensee*), of the other part (*Recite letters patent as in last Precedent*): AND WHEREAS the said A. B. hath agreed to grant to the said C. D. an exclusive licence to use the said invention within the county of —, upon the terms hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the reservations and covenants on the part of the said C. D. hereinafter contained, the said A. B. (hereinafter called “the grantor”), as beneficial owner, hereby grants unto the said C. D. (hereinafter called “the grantee”), THE SOLE and EXCLUSIVE licence and authority to use and exercise the said invention, under the said letters patent, within the county of —: To HOLD the same unto the grantee for all the remainder now unexpired of the term granted by the said letters patent: YIELDING AND PAYING to the grantor on the first day of every month the sum of £— for every sewing machine which shall have been made by the grantee by virtue of the licence hereby granted during the month immediately preceding each such payment: AND in case the total amount of the said monthly payments shall in any year ending on the 31st day of December fall short of £—, then YIELDING AND PAYING to the grantor, on the 31st day of December of every or any year in which such deficiency shall happen, such sum of money as, with the amount of the said monthly payments, will make up the sum of £—: AND the grantee hereby covenants with the grantor that the grantee will pay the royalties and sums of money hereinbefore reserved and made payable at the times and in manner aforesaid: AND ALSO will at all times keep a correct and particular account of all sewing machines made and constructed by him by virtue of this licence, and will at the end of every month furnish to the

Agreement for grant of licence.

Consideration.

Patentee grants licence to use and exercise invention,

at a royalty to be paid monthly for every article made under the licence.

And if the monthly royalties fall short of a specified annual sum, a further sum to make up the deficiency at the end of the year.

Covenants by licensee to pay royalties;

to keep accounts of articles constructed under licence;

LICENCE TO
USE A PATENT.

to permit
grantor to
inspect stock.

Proviso for
avoiding the
licence on
non-payment
of royalty or
breach of
covenants.

Covenant by
grantor for
quiet enjoy-
ment by
licensee.

Not to exercise
patent privi-
lege, or
authorize
others to do so
within the
district with-
out the consent
of licensee.

To take pro-
ceedings at
request and
for benefit of
licensee
against per-
sons infringing
patent privi-
lege within the
district.

Upon being
indemnified
by licensee
against costs;
and that

grantor a true and correct list and particular of all sewing machines made and constructed by him during the then pre-
ceding month, so as to show the amount of royalty payable
under the foregoing reservation, and will also furnish to him all
such information as shall be required in order to test the
accuracy of the said list, and will (if required) verify the same
by statutory declaration: AND ALSO will permit the grantor to
enter into and upon any place where the sewing machines made
and constructed under this licence shall for the time being be
kept in order to inspect the same: PROVIDED ALWAYS, that if
default shall be made in payment of any royalty or sum of
money payable under the foregoing reservations for the space of
fourteen days after the time hereby appointed for such payment,
or if there shall be any breach committed of the grantee's
covenants hereinbefore contained, then and in either of such
cases the grantor may, by notice in writing given to the grantee,
or left for him at his usual or last known place of abode in
England or Wales, declare the licence hereby granted to be
void, and the same shall be void accordingly; AND the grantor
hereby covenants with the grantee that the grantee, paying the
royalties and sums of money hereinbefore reserved, and observ-
ing and performing the covenants hereinbefore on his part con-
tained, shall at all times during the residue of the said term
peaceably and quietly hold, exercise, and enjoy the licence
hereby granted, without any lawful interruption or disturbance
by the grantor or any other person; AND ALSO that the grantor
will not at any time during the said term exercise or use or
authorise others to exercise or use the said invention within the
county of —, without the consent in writing of the grantee,
first had and obtained: AND if any infringement of the said
patent privilege shall be committed or threatened by any person
or persons within the said county, then and in every such case
the grantor will, at the request and for the benefit of the grantee,
take such proceedings against the person or persons so infringing
or threatening to infringe the said patent privilege for the pur-
pose of recovering damages, or for the purpose of restraining
such infringement as shall or may be reasonably required, he
the grantee well and sufficiently indemnifying the grantor from
and against all costs, charges, and expenses attending or inci-
dental to such proceedings as aforesaid: AND FURTHER, that if

at any time or times hereafter, during the continuance of this licence, the grantor shall make or discover any improvement in the said invention, or in the using of the same, or which can or may be applied to the said invention, or shall become the owner of any such improvement, then and in every such case, and whether such improvement shall be the subject of letters patent or not, the grantor will communicate the same to the grantee who shall be entitled to use and practise such improvement within the said county, during the continuance of the licence hereby granted, without paying any further or other sum of money or acknowledgment in respect thereof: AND IT IS DECLARED that the expressions "the grantor" and "the grantee" herein used include where the context allows, besides the said A. B. and C. D., all persons deriving title under them respectively.

IN WITNESS, &c.

LICENSEE TO
USE A PATENT.

licensee shall
be entitled to
benefit of all
improvements.

No. CXLIX.

ASSIGNMENT of the GOODWILL and PROPERTY of a BUSINESS.

ASSIGNMENT
OF GOODWILL.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part: WHEREAS the said A. B. hath for some years past carried on the trade or business of —, at No. —, and the same trade or business is at the present time being carried on by him at the same place: AND WHEREAS the said A. B. hath agreed to sell to the said C. D. all his interest and goodwill in the said trade or business, and the debts, stock in trade, and effects intended to be hereby assigned, at the price of £—, and upon the terms hereinafter contained: AND WHEREAS the said A. B. has delivered to the said C. D. the books of account and other books relating to the said business, and in the said books are set forth the amounts and particulars of the debts respectively due and owing to and from the said

Parties.

Recite that
vendor has
carried on
business up to
present time.
Agreement
for sale of
goodwill, &c.

ASSIGNMENT
OF GOODWILL.

Assignment
of goodwill,

book and other
debts due to
the business,
and contracts,

and stock in
trade, &c.,

to purchaser
absolutely.

Covenants by
vendor,
that he will
not carry on
business
within a
specified
distance;

that books are
correct,

and that
vendor will
pay all sums
exceeding the
amount
appearing due
by the books;
and that he
will use his

A. B., and also the particulars of the contracts and engagements to which he is liable in respect of the said trade or business: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—, to the said A. B. paid by the said C. D. on or before the execution of these presents (*the receipt, &c*), and also in consideration of the covenants hereinafter contained on the part of the said C. D., the said A. B., as beneficial owner, hereby assigns unto the said C. D., ALL the beneficial interest and goodwill of the said A. B. in the said trade or business of —, so carried on by him as aforesaid, and also all the book and other debts now due and owing to him on account of the said trade or business, and all securities for the same, and also all contracts and engagements, benefits, and advantages which have been entered into with the said A. B., or to which he is or can be entitled on account or in respect of the said trade or business, and also all the stock in trade, goods, fixtures, articles, and things which at the date of these presents belong to the said A. B. on account of the said trade or business, or are in any wise used in the same; To HOLD the same unto the said C. D. absolutely: And the said A. B. hereby irrevocably appoints the said C. D. his attorney for him and in his name or otherwise to sue for, recover, and receive, and give effectual discharges for the debts hereby assigned: AND (in addition to the covenants for title implied by law) THE SAID A. B. hereby covenants with the said C. D. as follows, namely, THAT THE SAID A. B. will not at any time hereafter, either by himself, or in connection with any other person or persons, carry on the said trade or business of — within — miles of —, and that the amount and particulars of the debts respectively due and owing to and from the said A. B. on account of the said trade or business, and the particulars of the contracts and engagements to which he is liable in respect of the said trade or business are correctly stated and set forth in the books of account and other books so as aforesaid delivered by the said A. B. to the said C. D., and that the said A. B. will pay all the sums (if any) which may now be due and owing from the said trade or business in excess of the amount which, by the said books, appear to be so due and owing: AND ALSO that the said A. B. will, from time to time, and at all times hereafter, use his best endeavours to promote the said trade or business, and to give to

the said C. D. the full advantage of the connection and custom of the said A. B. in the said trade or business; AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the premises, the said C. D. hereby covenants with the said A. B., THAT the said C. D. will, from time to time, and at all times hereafter, keep indemnified the said A. B., and his estate and effects, from and against the several sums of money which by the said books appear to be due and owing from the said A. B. in respect of the said trade or business, and also from and against the contracts and engagements to which by the said books the said A. B. appears to be now liable, and also all interest, costs, expenses, losses, claims, and demands on account of the same debts, contracts, and engagements, respectively.

IN WITNESS, &c.

**ASSIGNMENT
OF GOODWILL.**

personal
influence.
Covenant by
purchaser to
indemnify
vendor against
debts due from
the business,
and from
contracts and
engagements.

No. CL.

**ASSIGNMENT of a POLICY of LIFE ASSURANCE to a
PURCHASER (1).**

**POLICY OF
ASSURANCE.**

THIS INDENTURE, made the — day of —, BETWEEN Parties.
A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: WHEREAS by a policy of assurance under the hands of three of the directors of the — Assurance Society, dated the — day of —, and numbered —, the sum of £1000 is assured to be paid to the executors, adminis-

Recite policy
of assurance.

(1) By the 30 & 31 Vict. c. 144, persons or corporations entitled, or becoming entitled by assignment or other derivative title, to a policy of life assurance, are empowered to sue at law in the names of such persons or corporations to recover the policy moneys. The 3rd section provides that no assignment made after the passing of the Act shall confer on the assignee any right to sue for the policy moneys until a written notice of the date and purport of the assignment is given to the assurance company at their principal place of business; and that the date on which such notice shall be received shall regulate the priority of all claims under any assignment. The 6th section prescribes the manner in which notices of assignment are to be acknowledged by the assurance company. (See 31 Vict. c. 86, as to marine assurance; also *Spencer v. Clarke*, 9 Ch. D. 80.) And by the 19th section of the 51 Vict. c. 8, it is provided that no such assignment as is above-mentioned shall confer on the assignee any right to sue for the moneys assured, or give a discharge for the same until it is duly stamped.

Assignee of
life policy may
sue in his own
name.

POLICY OF ASSURANCE.	
Agreement for sale.	trators, or assigns of the said A. B., within three calendar months after his decease, subject to the annual premium of £—: AND WHEREAS the said A. B. hath agreed to sell to the said C. D. the said policy of assurance, at the price of £—:
Witnessing part.	NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—, &c. (<i>the receipt, &c.</i>), the said
Consideration.	A. B., as beneficial owner, hereby assigns unto the said C. D.,
Assignment by vendor of policy and premises,	ALL THAT the hereinbefore recited policy of assurance, and the said sum of £— thereby assured, and all other moneys, benefits, and advantages to be had, recovered, or obtained
to hold to purchaser absolutely.	under or by virtue of the said policy: To HOLD the same unto the said C. D. absolutely, subject to the conditions as to payment of the future premiums and otherwise to be henceforth observed in respect of the said policy.
	IN WITNESS, &c.

No. CLI.

ADVOWSON.**CONVEYANCE of an Advowson (m).**

Parties.	THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c. (<i>vendor</i>), of the one part, and C. D. of, &c. (<i>pur-</i>
Grant of next presentation.	(m) A vendor has no power to grant the next presentation during a vacancy (<i>Baker v. Rogers</i> , Cro. Eliz. 788), so that if a conveyance is executed of an advowson in fee during a vacancy, the immediately pending right of presentation would not pass to the purchaser. (<i>Grey v. Hesketh</i> , Ambler, 268; <i>Greenwood v. Bishop of London</i> , 5 Taunt. 727.)
Purchaser of advowson in fee.	The owner of an advowson (including the purchaser of an estate for life in an advowson), being a clerk, may, on a vacancy, offer himself to the bishop, and the bishop cannot refuse him on that ground; but the grantee of the next presentation is precluded from so doing by 12 Anne, St. 2, c. 12. (<i>Walsh v. Bishop of Lincoln</i> , L. R. 10 C. P. 518.)
Sale of advowson where incumbent is in extremis.	The sale of an advowson or of a next presentation, the incumbent being in extremis at the time, is not invalid on that account. (<i>Fox v. Bishop of Chester</i> , 6 Bing. 1.) In <i>Fox v. Bishop of Chester</i> , it was expressly found by the jury that the purchase was made without the privity of the clerk who was afterwards presented, and without any intention to present him. It must not, however be assumed from this, that the privity of the clerk or the intention to present him vitiates a purchase where the incumbent is in extremis, and not in other cases. When the clerk is privity to the contract in this sense, that it is part of the arrangement that he shall be presented, the transaction is simoniacal and void, whether the incumbent is in extremis or not. On the other hand, the mere intention on the part of

chaser), of the other part: WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B., as beneficial owner, hereby conveys unto the said C. D., ALL THAT the advowson and perpetual right of presentation of and to the rectory or

ADVOWSON.

Vendor grants advowson to purchaser.

a purchaser to present a particular person, provided that he is under no obligation to do so, does not, it is conceived, vitiate the purchase in either case.

If an advowson is vested in a trustee or mortgagee, the *cestui que trust* or mortgagor is entitled to nominate, and may compel the trustee or mortgagee to present his nominee. (Hill, p. 446; Coots, 202.)

If the owner in fee of an advowson dies during a vacancy, the next presentation goes to his personal representatives. (*Mirehouse v. Rennell*, 8 Bing. 490.) If the owner in fee is also incumbent, the advowson on his death descends to his heir. (Tud. R. P. 214.)

Where the owner or *cestui que trust* of an advowson is a bankrupt, the right of nomination may be exercised by him in respect of any vacancy occurring before the sale of the advowson or next presentation (Hill, 449); and in the absence of a settlement, a husband during the coverture has the right of nomination in respect of an advowson vested in his wife, and after her death, in case there were issue of the marriage, and the husband survives, he will be entitled to present as tenant by the curtesy. (Hill, 450; 3 Cru. Dig. 14; Tud. R. P. 214.) When the advowson is separate estate of the wife, either by express limitation under the Married Women's Property Acts, or otherwise, her husband as such can acquire no right of nomination, except in the event of there having been issue of the marriage, and the wife dying without having disposed of the advowson in her life or by her will. If a widow is entitled to dower in respect of an advowson, the heir has the first two presentations and the widow the third.

If a right of presentation is vested in joint tenants or tenants in common they must concur in the presentation, in order to make it binding on the ordinary. If they present severally, the ordinary may admit either of the presentees or refuse all, and if no joint presentation is made within the six months he can present by lapee. (Co. Lit. 186a.)

In the case of coparceners the eldest may present on the first turn, and this right passes to her issue or to her assign. (Co. Lit. 186a.)

Where an advowson is vested in trustees in trust for tenants in common and the beneficiaries cannot agree as to the nomination, the Court will direct them to draw lots. (*Johnstone v. Baker*, 9 De G. M. & G. 439.) And it is conceived that the same course would be adopted in the case of joint tenants. In the case of coparceners, equity would follow the law and allow the eldest to nominate on the first turn.

An infant, and not his guardian, is entitled to present to a church. (*Heale v. Greenbank*, 3 Atk. 710.)

If the right of nomination is vested in trustees, they cannot vote by proxy; and unless they have been incorporated by charter, they must all join in the presentation, if there is no clause authorizing a majority to bind the rest. (Hill, 451.)

Where an advowson is vested in the parishioners or inhabitants of a place, or in trustees for them, the majority of the parishioners or inhabitants may appoint. (*Fearon v. Webb*, 14 Ves. 13.)

As to engagements to resign benefices in favour of other persons, see 9 Geo. 4, c. 94, ss. 1-6.

Power of nomination when advowson is vested in trustee, &c.

Owner in fee dying during vacancy.

Bankrupt.

Right of husband as tenant by curtesy.

Right of widow.

Joint tenants and tenants in common.

Coparceners.

Tenants in common when they cannot agree.

Infant.

Trustees.

Parishioners, &c.

Resignation of benefices.

ADVOWSON. parish church of —, in the county of — : To HOLD the same unto and to the use of the said C. D., in fee simple.

IN WITNESS, &c.

No. CLII.

NEXT
PRESENTATION.

CONVEYANCE *of the next Presentation to a Rectory.*

Parties.

Agreement for
sale of next
presentation.

Consideration.
Vendor
conveys next
presentation

to purchaser.

Absolute
covenants for
title.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*rendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part: WHEREAS the said A. B. hath agreed to sell to the said C. D. the next presentation intended to be hereby conveyed at the price of £—: AND WHEREAS, in order to save expense, it was agreed upon the treaty for the said purchase that the said C. D. should accept the title of the said A. B. without investigation, and that in consideration thereof the said A. B. should enter into an absolute covenant for title: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration, &c. (*the receipt, &c.*), the said A. B., as beneficial owner, hereby conveys unto the said C. D., THE NEXT PRESENTATION of and to the rectory or parish church of —, in the county of —, when the same shall become void by the death, resignation, or deprivation of —, the present incumbent thereof, or otherwise howsoever: To HOLD the same unto the said C. D., absolutely: AND the said A. B. hereby covenants with the said C. D. that he the said A. B. has good right to convey the said next presentation, and that the said C. D., his executors, administrators, or assigns, shall present, by virtue of this conveyance, without any interruption from any person whomsoever: AND ALSO that the said A. B., and his heirs, and all other persons (if any) interested in the advowson of the said rectory, will at all times hereafter, at the request and with the consent of the said C. D., his executors, administrators, or assigns, make, do, and execute, all such acts, deeds, and things, for further and

more effectually assuring the said next presentation unto him or them, as he or they may require.

NEXT
PRESENTATION.

IN WITNESS, &c.

No. CLIII.

CONVEYANCE of an ADVOWSON and an ANNUITY until
the BENEFICE becomes VACANT (n).

GRANT OF
ADVOWSON
AND ANNUITY
UNTIL
VACANCY.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part: WHEREAS the said A. B. has agreed to sell to the said C. D. the advowson of the rectory or parish church of —, intended to be hereby conveyed, and an annuity of £80 to be paid to the said C. D., his executors, administrators, or assigns, until the benefice shall become vacant, and to be secured by the bond of the said A. B., at the price of £2,000: AND WHEREAS in part pursuance of the said agreement the said A. B. has given and executed to the said C. D. his bond bearing even date with these presents, in the penal sum of £2,000, subject to a condition thereunder written for making void the same, if the said A. B., his heirs, executors, or administrators, shall pay to the said C. D., his executors, administrators, and assigns, the annual sum of £80 until the said benefice shall become vacant, by equal half-yearly payments, on the — day of — and the — day of — in every year, the first of such half-yearly payments to be made on the — day of — next: NOW THIS INDENTURE WITNESSETH, that in further pursuance of the said agreement, and in consideration, &c. (*Conveyance of advowson to C. D., as in Precedent No. CLI., supra, p. 431.*)

Parties.

Recite
agreement
for sale.

Bond of
vendor to
purchaser to
secure annuity
until benefice
becomes
vacant.

Conveyance
of advowson.

IN WITNESS, &c.

(n) See *supra*, p. 111, note.

No. CLIV.

MERGER OF
RENT-CHARGE.

MERGER of RENT-CHARGES in lieu of TITHES (o).

Parties.

Recite award.

TO ALL TO WHOM THESE PRESENTS SHALL COME, WE, A. B., of, &c., and C. D., of, &c. (*proprietors of lands*), send greeting: WHEREAS, by an award made in pursuance of the Act for the Commutation of Tithes in England and Wales (*p*), and duly confirmed on the — day of —, the tithes of the parish of L., in the county of —, were commuted, and a rent-charge of the annual sum of £5 was awarded to be paid to —, of the parish of —, in the said county of —, yeoman, his heirs or assigns, or to the persons entitled in remainder or reversion after him, instead of the impropriate tithes arising from certain lands of the said parish of L., of the estimated quantity, in statute measure, of 15A. 1R. 16P.: AND WHEREAS, by the instrument of apportionment of the rent-charge awarded to be paid in lieu of the tithes of the said parish of L., and also duly confirmed on the — day of —, the said rent-charge of £5 has been charged upon the lands particularly described in the said apportionment, and on the plan thereto annexed numbered respectively 1481, 1487, 1486, 1555, 1558, 1559, and 1570:

Merger of tithes
rent-charges.

(o) Under the 6 & 7 Wm. 4, c. 71, and the 1 & 2 Vict. c. 64, ss. 1, 3, a tenant in fee or in tail in possession of tithes, or commutation rent-charge in lieu of tithe, or any person having power to acquire a fee simple therein, or the tenant for life in possession of both lands and tithes, can, by deed or by declaration under hand and seal, to be approved by the commissioners and confirmed under their seal, merge the tithes, or commutation rent-charge, in the land out of or in respect of which they issue.

By the 1st section of 2 & 3 Vict. c. 62, all charges on tithes which are merged under the Acts are to have priority over any charges on the lands at the time of the merger.

The 6th section of 2 & 3 Vict. c. 62, authorizes the merger of the tithes of glebe land, where the glebe and the tithes belong to the same person in virtue of his benefice; and under the 19th section of 9 & 10 Vict. c. 73, all powers relating to the merger of tithes or rent-charge instead thereof, may be executed by any person entitled in equity to the same, but so that all the charges on the tithes shall be prior and primary charges on the lands and the owners thereof for the time being.

To remove all doubts on the subject, it is enacted, by the 1 & 2 Vict. c. 64, s. 4, that the provisions of the Acts in relation to merger shall extend to *copyholds*.

(p) 6 & 7 Wm. 4, c. 71, ss. 67, 71.

AND WHEREAS the said A. B. is seised for an estate in possession in fee simple of so much of the said rent-charge of £5 as was awarded in lieu of the tithes arising from the said lands numbered 1481, 1487, and 1486 respectively, and is seised in fee according to the custom of the manor of L., in the county of —, of the same lands: AND WHEREAS the said C. D. is seised for an estate in possession in fee simple of the said lands numbered 1555, 1558, 1559, and 1570 respectively, and is also seised for an estate in fee simple in possession of so much of the said rent-charge of £5 as was awarded in lieu of the tithes arising from the last-mentioned lands: NOW THEREFORE we the said A. B. and C. D., according to our respective rights and interests therein, do hereby respectively declare it to be our will and intent, THAT THE SAID RENT-CHARGE of £5 shall henceforth be absolutely merged and extinguished in the freehold and inheritance of the lands in respect of which the said rent-charge was heretofore payable, and upon which it has been charged as aforesaid in and by the said instrument of apportionment. In TESTIMONY whereof we have hereunto subscribed our names and affixed our seals, this — day of —, —.

MERGER OF
RENT-CHARGE.

Seisin of lands
by the
different
proprietors.

Merger by
proprietors of
rent-charge.

No. CLV.

ASSIGNMENT of a SHARE in RESIDUARY PERSONAL ESTATE derived under a WILL (g).

SHARE IN
RESIDUARY
PERSONALTY.

THIS INDENTURE, made the — day of —, BETWEEN Parties.

A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c., and E. F., of, &c. (*purchasers*), of the other part: WHEREAS G. H., late of, &c., made his will, dated the — day of —, and

Testamentary
gift of
residuary
estate.

(g) If the vendor is a married woman who has married since the 31st of December, 1882, she will be described as "A. B., the wife of H. B., of, &c., to whom she was married since the 31st day of December, 1882." In other respects the assignment will be in the same form as No. CLV., substituting "she" for "he" and "her" for "him" when necessary. See *supra*, p. 189.

Description
of married
woman who
has married
since 1882.

**SHARE IN
RESIDUARY
PERSONALTY.**

Agreement for
purchase of
vendor's
share.

Consideration.

Vendor assigns
his moiety of
residuary
estate to
purchasers.

thereby, &c. (*recite residuary bequest under which vendor takes a moiety, and death of testator and probate of will*): AND WHEREAS the said C. D. and E. F. have agreed with the said A. B. for the absolute purchase of his share, of and in the residuary personal estate of the said testator at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. paid by the said C. D. and E. F. in equal shares on or before the execution of these presents (*the receipt whereof, &c.*), the said A. B., as beneficial owner, hereby assigns unto the said C. D. and E. F., ALL THAT the moiety or other the part or share of him the said A. B. under the said will of and in the residuary personal estate of the said testator, and the stocks, funds, and securities of which the same may consist, or by which the same respectively may be represented: To HOLD the same unto the said C. D. and E. F. absolutely, as tenants in common.

IN WITNESS, &c.

No. CLVI.

**LIFE INTEREST
IN STOCK.**

ASSIGNMENT of a LIFE INTEREST in STOCK.

Parties.

Recite settle-
ment of stock,

for vendor for
life.

Agreement
for sale of life
interest.

Witnessing
part.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part: WHEREAS by an indenture dated the —— day of ——, and made between (*parties*), it was declared and agreed that E. F. and G. H., their executors and administrators, should stand possessed of the sum of £250 Consolidated £3 per cent. Annuities, transferred into their names as therein mentioned, upon trust to pay to the said A. B. and his assigns the dividends and annual produce thereof for his life, and after his decease, upon trust as therein mentioned: AND WHEREAS the said sum of £250 Consolidated £3 per cent. Annuities has been converted into a like amount of 2½ per Cent. Consolidated Stock: AND WHEREAS the said A. B. hath agreed to sell to the said C. D. his life interest in the said sum of £250 Consolidated Stock, at the price of £——: NOW THIS INDENTURE

WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B., as beneficial owner, hereby assigns unto the said C. D., ALL the dividends and annual produce to accrue and become payable during the life of the said A. B., from or in respect of the said sum of £250 Consolidated Stock, now standing in the names of the said E. F. and G. H., as hereinbefore mentioned: To HOLD the same unto the said C. D. absolutely.

LIFE INTEREST
IN STOCK.

Assignment
by vendor
of life interest
in stock

to purchaser.

IN WITNESS, &c.

No. CLVII.

ASSIGNMENT *by a* MARRIED WOMAN, *married before the* 1st of January, 1883, *of her* REVERSIONARY INTEREST *in* PERSONALTY *under a* WILL *made after the* 31st of December, 1857 (*r*).

RELEASE BY A
MARRIED
WOMAN OF
REVERSIONARY
PERSONALTY.

THIS INDENTURE, made the — day of —, BETWEEN Parties.

A. B. of, &c., and C., his wife (*vendors*), of the one part, and E. F. of, &c. (*purchaser*), of the other part: WHEREAS G. H., late of —, &c., deceased, made his will, dated the — day of —, 1860, and thereby, among other things, he bequeathed the sum of £10,000 to his trustees therein named, upon trust to invest the same and vary the investments as therein mentioned, and to pay the annual income of the said trust moneys, stocks, funds, and securities unto L. M., for his life, and from and after his decease, the said testator declared that the said trust moneys, stocks, funds, and securities, and the annual income thereof, should be divided between all the children of the said L. M. who should attain the age of twenty-one years in equal shares (*Death of G. H., and probate of his will*): AND WHEREAS the said L. M. has six children of whom the said C. B. is one, and the said C. B. and two others of the said children have attained the age of twenty-one years, and the three others are under that age and

Will be-
queathing
legacy to
tenant for life.

Remainder to
his children
attaining
twenty-one.

Vendor one of
such children
has attained
twenty-one.

(*r*) This deed must be acknowledged by the married woman. (See 20 & 21 Vict. c. 57.)

RELEASE BY A
MARRIED
WOMAN OF
REVERSIONARY
PERSONALTY.

Agreement by
vendor for sale
of her ex-
pectant inte-
rest in legacy.

Assignment by
vendor, with
concurrence of
her husband,
of share of
legacy ex-
pectant on
decease of her
father,

to purchaser
absolutely.

unmarried: AND WHEREAS the said A. B. and C. his wife have agreed to sell to the said E. F. the reversionary share and interest of the said C. B. in the said sum of £10,000 so bequeathed as aforesaid, and the investments representing the same, at the price of £—: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B. and C. his wife, as beneficial owners, hereby assign unto the said E. F. ALL the share and interest, shares and interests, as well vested as contingent, and as well original as accruing, expectant on the decease of the said L. M., to which the said C. B. or the said A. B. in her right is now or shall or may hereafter be entitled under the said recited will of the said G. H., deceased, of and in the said sum of £10,000 so bequeathed as aforesaid, and the investments representing the same, and the annual income thereof: To HOLD the same unto the said E. F. absolutely.

IN WITNESS, &c.

No. CLVIII.

WHEN MAR-
RIED WOMAN
PURCHASES
WITH SAVINGS
OF BUSINESS
CARRIED ON
UNDER
PROTECTION
ORDER.

Parties.

Recite order
made by
justices at
petty sessions,

CONVEYANCE to a MARRIED WOMAN, *the PURCHASE being made out of the SAVINGS from BUSINESS carried on by her SEPARATELY under a PROTECTION ORDER.*

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c. (*rendor*), of the one part, and C. D. of, &c., the wife of X. D., but living separate from him under the Protection Order hereinafter recited, of the other part: WHEREAS, by an order dated the — day of —, 18—, made at a Petty Sessions of the Peace holden for the Petty Sessional Division of D—, in the county of G—, at the town-hall D—, in the said county, before —, four of Her Majesty's Justices of the Peace in and for the said county, and acting for the said division, and under the hands and seals of the said justices, After reciting that the said C. D., the wife of X. D., complained to them the said justices in petty sessions assembled, that the said X. D. had deserted her, and she prayed that they might make an order to

protect any money or property she might acquire by her own lawful industry, and property she might become possessed of after such desertion, against her said husband or his creditors, or any person claiming under him, And that it being then proved before them the said justices upon oath and otherwise, that on the — day of —, 18—, at the parish church of W—, in the said county of G—, the said C. D. had been duly married to the said X. D., and that afterwards on or about the — day of —, 18—, the said X. D. without reasonable cause had deserted her, and that she was then maintaining herself by her own industry, They the said justices being satisfied of the truth of the facts so proved before them as aforesaid, did thereby in pursuance of the statute in such case made and provided order that the earnings and property of the said C. D., acquired or to be acquired by her since the commencement of such desertion as aforesaid, should thereafter be protected from the said X. D. her husband, and from all creditors and persons claiming, or who might thereafter claim under him, and that all such earnings and property should belong, and should be deemed to belong, to the said C. D. as if she were a *feme sole*: AND WHEREAS the said order was entered with the registrar of the county court of G—, holden at D—, on the — day of —, 18—: AND WHEREAS the said C. D. has agreed with the said A. B. for the absolute purchase of the hereditaments hereinafter described, for the sum of £—: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £—, on or before the execution of these presents paid to the said A. B. by the said C. D. out of earnings and property acquired by her since the commencement of her desertion by her said husband, as she doth hereby declare (*the receipt, &c.*), the said A. B., as beneficial owner, hereby conveys unto the said C. D., ALL, &c. (*parcels*), To HOLD the same unto and to the use of the said C. D. in fee simple for her separate use.

IN WITNESS, &c.

WHEN MARRIED WOMAN PURCHASES WITH SAVINGS OF BUSINESS CARRIED ON UNDER PROTECTION ORDER.

that earnings and property acquired by married woman after desertion should belong to her as *feme sole*.

Order entered with registrar.

Agreement by married woman for purchase.

Consideration. Conveyance to wife for her separate use.

No. CLIX.

CONSENT BY
MORTGAGEES
OF LIFE ESTATE
TO SALE.

DEED *whereby the MORTGAGEES of a LIFE ESTATE in settled
land* CONSENT to a SALE *by the tenant for life under the
SETTLED LAND ACT (s).*

Parties.	THIS INDENTURE, made the — day of —, 18—,
Recite settlement.	BETWEEN A. B., of, &c. (<i>first mortgagee</i>), of the first part, C. D., of, &c. (<i>second mortgagee</i>), of the second part, E. F., of, &c. (<i>third mortgagee</i>), of the third part, and G. H., of, &c. (<i>tenant for life</i>), of the fourth part: WHEREAS by an indenture dated, &c., and made, &c. (<i>date and parties</i>), certain lands and hereditaments situate in the county of —, were settled to uses under which
Mortgages by tenant for life.	the said G. H. is tenant for life in possession: AND WHEREAS the said G. H. has executed mortgages of his life estate in the settled hereditaments in favour of the parties hereto of the first, second, and third parts respectively, the short particulars of
That tenant for life wishes to sell under Settled Land Act.	which mortgages are set forth in the first schedule hereto: AND WHEREAS the said G. H. is desirous of selling the hereditaments mentioned in the second schedule hereto (being part of the settled hereditaments) under the powers of the Settled Land Act, 1882, and he has requested the parties hereto of the first, second, and third parts respectively to give their consent to such sale, which they have agreed to do: NOW THIS INDENTURE WIT-
Witnessing part. Mortgagees consent to tenant for life selling.	NESSETH that, in pursuance of the said agreement, and in consideration of the premises, the said several persons parties hereto of the first, second, and third parts respectively hereby CONSENT to the said G. H. selling the hereditaments comprised in the second schedule hereto, or any part thereof, under the powers of the Settled Land Act, 1882: AND IT IS HEREBY
Declaration that mortgages shall be trans- ferred to life interest in sale moneys.	DECLARED that the life interest of the said G. H. in the moneys to arise from the sale of the hereditaments, and the lands to be purchased with those moneys, and the stocks, funds, and securities in or upon which those moneys shall in the mean- time be invested, shall be charged with the payment of all

(s) It will often be found more convenient where there are several mortgages on a life estate, to make the mortgagees give their consent by a separate deed instead of in the conveyance.

principal sums and interest secured or intended to be secured by the several mortgages mentioned in the first schedule hereto in like manner as the life estate of the said G. H. in the hereditaments which shall be sold as aforesaid, would have remained charged therewith and subject thereto if the same had not been sold: AND the parties hereto of the first, second, and third parts respectively, as to such of the documents mentioned in the first schedule hereto as are in their respective possession, hereby acknowledge the right of the said G. H. to production of the said documents, and to delivery of copies thereof (t).

CONSENT BY
MORTGAGERS
OF LIFE ESTATE
TO SALE.

Acknowledg-
ment as to
documents.

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

(To state the date of and parties to and short particulars of the several mortgage deeds.)

THE SECOND SCHEDULE ABOVE REFERRED TO.

(To describe shortly the lands intended to be sold.)

No. CLX.

RELEASE of PART of LANDS charged with a RENT-CHARGE with a view to a SALE (u).

RELEASE OF
PART OF LAND
FROM RENT-
CHARGE.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (releasor), of the one part, and C. D., of, &c.

Parties.

(t) Although under sect. 16 of the Conveyancing Act, 1881, a mortgagor is entitled to inspect documents relating to the mortgaged property, the above acknowledgment should be given, in order that the benefit of it may pass to purchaser.

(u) By the 22 & 23 Vict. c. 35, s. 10, it is provided that the release from Rent-charge a rent-charge of part of the hereditaments charged therewith shall not may be re-

**RELEASE OF
PART OF LAND
FROM RENT-
CHARGE.**

Recite that all the hereditaments subject to rent-charge remain vested in releasee.

Agreement to release.

Witnessing part.

Release of lands in schedule from rent-charge.

(releasee), of the other part (*Recite indenture under which "the hereditaments described in the schedule hereto, with other hereditaments," are charged with a rent-charge payable to A. B., and, subject to such rent-charge, are vested in C. D. in fee*):

AND WHEREAS all the hereditaments comprised in the hereinbefore recited indenture still remain vested in the said C. D. in fee simple, as he doth hereby declare: AND WHEREAS the said C. D., being about to sell the hereditaments described in the schedule hereto, has requested the said A. B. to release the same from the said yearly rent-charge of £—— limited to him by the hereinbefore recited indenture as aforesaid, which the said A. B. has agreed to do, being satisfied that the other hereditaments comprised in the same indenture are a sufficient security for the said rent-charge: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the premises, the said A. B. hereby releases all and singular the lands and hereditaments described in the schedule hereto, from the said yearly rent-charge of £—— limited to the said A. B. by the hereinbefore recited indenture as aforesaid, and from all claims and demands whatsoever for or in respect of the same or any part thereof: PROVIDED ALWAYS, that the hereditaments comprised in the hereinbefore recited indenture other than the hereditaments hereby released, shall remain subject to the same yearly rent-charge, and the powers and remedies for enforcing payment thereof, as if these presents had not been executed.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

leased as to a part of the property.

extinguish the whole rent-charge, but shall operate only to bar the right to recover any part of the rent-charge out of the hereditaments released, without prejudice nevertheless to the rights of all persons interested in the hereditaments remaining unreleased, and not concurring in or confirming the release.

No. CLXI.

DEMISE of a PORTION of certain LANDS charged with an ANNUITY and with GROSS SUMS of MONEY to TRUSTEES for a TERM OF YEARS upon trust by way of INDEMNITY and EXONERATION of the REMAINDER of such lands from the payment thereof.

DEMISE OF
LANDS BY WAY
OF INDEMNITY
AGAINST RENT-
CHARGE.

THIS INDENTURE, made the — day of —, BETWEEN Parties.

A. B., of, &c. (*owner*), of the one part, and C. D., of, &c., and E. F., of, &c. (*trustees*), of the other part: WHEREAS the said A. B. is seised in fee simple of the hereditaments described in the first and second schedules thereto subject to the following incumbrances (namely), (1) an annuity of £— payable to — during his life under an indenture dated, &c., and made, &c. (*date and parties*), and (2) a sum of £— raiseable for the portions of the brothers and sisters of the said A. B. under the trusts of a term of — years created by an indenture dated and made, &c. (*date and parties*): AND WHEREAS the said A. B. has agreed to sell some of the hereditaments comprised in the second schedule hereto, and intends shortly to sell the residue of the same hereditaments, and in order to facilitate such sales he is desirous of charging the said incumbrances exclusively on the hereditaments comprised in the first schedule hereto (which are of ample value) in exoneration of the hereditaments comprised in the said second schedule: NOW THIS INDENTURE WITNESSETH, that the said A. B., as beneficial owner, hereby demises unto the said C. D. and E. F., ALL the hereditaments mentioned and described in the first schedule hereto: To HOLD the same unto the said C. D. and E. F., for the term of one thousand years, to be computed from the date of these presents, without impeachment of waste, upon the trusts following (that is to say), UPON TRUST and to the intent that the hereditaments hereby demised, and the rents and profits thereof, shall be at all times henceforth an indemnity to the hereditaments comprised in the second schedule hereto, and every part thereof, and to the several purchasers and proprietors thereof, and of every part thereof, from and against the said annuity of

That lands
charged are
comprised in
schedules.

Demise of
lands in first
schedule to
trustees for a
term of years.

Upon trust to
indemnify
lands in second
schedule from
annual sum.

DEMISE OF
LANDS BY WAY
OF INDEMNITY
AGAINST RENT-
CHARGE.

And for that
purpose to
raise money
by sale or
mortgage, or
otherwise.

Statutory
power to
appoint new
trustees to
apply.

£—— and the said sum of £—— raiseable for portions as afore-
said and the interest thereof, and all claims and demands in
respect thereof; AND UPON TRUST that in case any claim or demand
shall at any time hereafter be made for or on account of the said
annuity and sum of £——, or any part thereof, upon or against
the hereditaments comprised in the second schedule hereto, or
any part thereof, or upon the owners or occupiers of the same,
or any of them, then and in every such case the said C. D. and
E. F., or the survivor of them, or other the trustees or trustee
for the time being of the said term, shall out of the rents and
profits of the hereditaments hereby demised, or any part thereof,
or by selling, mortgaging, or leasing the same, for all or any
part of the said term, or by any other reasonable ways or
means, raise such sum or sums as shall or may be required for
the purpose of paying and discharging the said annuity and
sum of £——, or such part thereof as shall be claimed as afore-
said, and all costs, damages, and expenses, which may be
sustained or incurred by reason of any such claim or demand
as aforesaid, and all such other costs and expenses as may be
incurred in the execution of the trusts and provisions of these
presents, and shall apply the moneys to be so raised as afore-
said accordingly: AND UPON FURTHER TRUST that, subject and
without prejudice to the trusts hereinbefore declared, the said
trustees or trustee shall permit the rents and profits of the said
hereditaments hereby demised, to be received by the said A. B.,
his heirs or assigns, or other the person or persons for the time
being entitled to the same hereditaments in reversion imme-
diately expectant on the said term of one thousand years: AND
IT IS HEREBY DECLARED, that the power of appointing new
trustees conferred by statute shall apply to these presents.

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

THE SECOND SCHEDULE ABOVE REFERRED TO.

No. CLXII.

DECLARATION of TRUST of a SUM of STOCK invested in
the names of TRUSTEES by way of INDEMNITY against a
 SUM of MONEY charged on LANDS which have been SOLD
 to several PURCHASERS.

DECLARATION
 OF TRUST OF
 STOCK BY WAY
 OF INDEMNITY.

THIS INDENTURE, made the — day of —, BETWEEN Parties.
 A. B., of, &c. (*vendor of lands*), of the one part, and C. D., of,
 &c., and E. F., of, &c. (*trustees*), of the other part (*Recitals* Recite settle-
showing that under a settlement and disentailing assurance in the
events which happened A. B. became absolutely seised in fee simple
of lands subject to a sum of £—— charged thereon for the portions
of his younger brothers and sisters): AND WHEREAS the said Sales of land
 A. B. has lately sold the hereditaments comprised in the said comprised in
 recited indenture of settlement to several persons, and the settlement.
 particulars of the said several sales and the names of the
 several purchasers are set forth in the schedule hereto; AND Agreement
 WHEREAS on the treaty for the said several sales it was for indemnity.
 stipulated and agreed that the sum of £—— should be invested
 by the said A. B. in the names of trustees, to be held by them
 upon the trusts hereinafter declared concerning the same: AND Purchase of
 WHEREAS in pursuance of the said agreement the said A. B. has Consolidated
 invested the sum of £—— in the purchase, in the names of Stock in the
 the said C. D. and E. F., of the sum of £—— 2½ per Cent. names of
 Consolidated Stock: NOW THIS INDENTURE WIT- trustees.
 NESSETH, that in further pursuance of the said agreement, Witnessing
 and in consideration of the premises, It is HEREBY AGREED AND part.
 DECLARED that the said C. D. and E. F. (hereinafter called Declaration
 “the trustees”) shall stand possessed of the said sum of £—— of trust of
 2½ per Cent. Consolidated Stock (hereinafter called “the said Consolidated
 trust stock”), upon the trusts following (that is to say), UPON Stock.
 TRUST that the trustees shall, when and so soon as the said sum
 of £—— by the said indenture of settlement charged on the
 hereditaments therein comprised for portions as aforesaid, or any
 part or parts thereof, shall become payable, raise the same sum
 of £——, or such part or parts thereof as shall from time to
 time become payable as aforesaid, and all interest (if any) which
 Upon trust to
 apply same in
 payment of
 portions in
 exoneration of
 settled lands.

DECLARATION
OF TRUST OF
STOCK BY WAY
OF INDEMNITY.

shall become due in respect thereof, by the sale of a competent part of the said trust stock, and shall apply the moneys to be so raised as aforesaid accordingly, To THE END and intent that the hereditaments comprised in the said indenture of settlement, and the several purchasers of the same respectively, and all other persons for the time being entitled to or interested in the same, shall and may at all times hereafter be exonerated and discharged of and from the payment of the said sum of £—— charged on the said hereditaments for portions as aforesaid and every part thereof, and may be indemnified against the same sum and every part thereof, and all claims and demands for or in respect of the same, with and by means of the said trust stock, and the proceeds of the sale thereof, AND SUBJECT to the trust aforesaid, do and shall stand possessed of the said trust stock, IN TRUST for the said A. B., absolutely, and so that until the said sum of £—— shall become raisable for portions as aforesaid, the dividends of the said trust stock, or of such part thereof as shall not for the time being have become saleable under the trust aforesaid, shall be paid to the said A. B.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. CLXIII.

ACKNOWLEDGMENTS
AND UNDERTAKINGS.

ACKNOWLEDGMENT of RIGHT to PRODUCTION of
DEEDS and UNDERTAKING for SAFE CUSTODY. (*Several
forms adapted to the circumstances.*) (x)

1. (*Where the vendor is beneficial owner.*)

To X. Y., of, &c. (*purchaser*).

I, A. B., of, &c. (*vendor*), hereby acknowledge your right

(x) As a general rule, it is more convenient to insert the acknowledgment in the deed of conveyance, and there is now no objection to this,

By beneficial
owner by
separate
writing.

to production and delivery of copies of the documents mentioned in the schedule hereto, which documents relate to (among other property) a piece or parcel of land [*or to divers lands and hereditaments*] situate at, &c., conveyed to you by an indenture dated this — day of —, 18—. AND I hereby undertake for the safe custody of the said documents.

ACKNOWLEDGMENTS
AND UNDERTAKINGS.

As witness my hand this — day of —, 18—.

THE SCHEDULE ABOVE REFERRED TO.

2. (*Where vendors are trustees.*)

By trustees.

To X. Y., of, &c. (*purchaser*).

We, C. D. and E. F. (*trustees*), hereby acknowledge, &c. (*as in No. 1, omitting the undertaking for safe custody*).

3. (*Where the sale is made by a mortgagor with the concurrence of the mortgagees (y).*)

By mortgagor
and mortgagees.

To X. Y., of, &c. (*purchaser*).

We, A. B., C. D., and E. F. (*mortgagees and mortgagor*), hereby acknowledge, &c. (*as in No. 1*). AND I, the said E. F. (*mortgagor*), hereby undertake for the safe custody of the said documents.

THE SCHEDULE ABOVE REFERRED TO.

4. (*Where different persons give the acknowledgment as to different deeds.*)

By different
persons as to
different
deeds.

To X. Y., of, &c. (*purchaser*).

I, A. B., of, &c., having in my possession the documents mentioned in the first part of the schedule hereto, AND we, C. D., of, &c., and E. F., of, &c. (*trustees*), having in our possession the documents mentioned in the second part of the said schedule, AND I, G. H., of, &c., having in my possession the documents mentioned in the third part of the said schedule, all which documents comprised in the first, second, and third parts of the said schedule relate, &c. (*as in No. 1*), hereby acknow-

having regard to sect. 3, sub-sect. 3, of the Conveyancing Act, 1881, which precludes a purchaser from requiring the production of a document dated prior to the stipulated commencement of title, merely because it is covenanted to be produced or otherwise noticed in an abstracted deed. But there may be special circumstances rendering a separate instrument desirable. It need not be under seal.

(y) See p. 259, *supra*.

ACKNOWLEDGMENTS
AND UNDERTAKINGS.

ledge your right to production and delivery of copies of the said documents respectively. AND we, the said A. B. and G. H., hereby undertake for the safe custody of the documents mentioned in the first and third parts of the said schedule respectively.

AS WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

By largest purchaser to other purchaser.

5. (*Where upon a sale in lots the deeds have been delivered to one of the purchasers, who gives an acknowledgment, &c., to another purchaser (z).)*

To X. Y., of, &c. (*a purchaser*).

I, A. B., of, &c. (*largest purchaser*), having lately received from L. M., of, &c. (*vendor*), the documents mentioned in the schedule hereto, which documents relate to certain lands and hereditaments situate at, &c., purchased by me from the said L. M., and conveyed to me in fee simple by an indenture dated this — day of —, 18—, and also to certain land situate at —, lately purchased by you from the said L. M., and conveyed to you in fee simple by an indenture dated, &c., do hereby acknowledge your right to production and delivery of copies of the said documents, and I hereby undertake for the safe custody thereof.

AS WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

By purchaser to vendor.

6. (*Where the deeds are handed over to a purchaser of the bulk of the property affected by them, he giving an acknowledgment, &c. to the vendor (a).)*

To X. Y., of, &c. (*vendor*).

I, A. B., of, &c. (*purchaser*), having received from you the documents mentioned in the schedule hereto, which documents relate to certain lands and hereditaments situate at, &c., conveyed by you to me in fee simple by an indenture dated this

(z) This is a common arrangement. But it is more convenient for the vendor to give the acknowledgment, &c. to every purchaser, retaining the documents for that purpose until all the purchases have been completed. The liability under the vendor's acknowledgment will pass to the largest purchaser when the documents are delivered to him.

(a) This is not an usual arrangement, as the vendor is entitled to retain the deeds, however small may be the property remaining unsold.

— day of —, 18—, and also to certain other lands and hereditaments which remain your property do hereby acknowledge your right to production, &c. (*as in No. 3 to end*).

ACKNOWLEDG-
MENTS AND
UNDER-
TAKINGS.

7. (*Where a purchaser gives a former purchaser with whom the vendor had entered into a covenant for production of deeds an acknowledgment and undertaking in substitution for the covenant*).

WHEREAS, by an indenture dated, &c., and made between E. F. of the one part, and C. D. of the other part, certain hereditaments, situate, &c., were conveyed by the said E. F. unto and to the use of the said C. D., his heirs and assigns for ever, and by an indenture bearing even date with the said indenture, the said E. F. entered into a covenant with the said C. D. for the production of the documents comprised in the schedule hereto, subject nevertheless to a proviso that in case the said E. F., his heirs or assigns, should dispose of such of the hereditaments to which the said documents should relate, as had not been so sold to the said C. D. as aforesaid, and should deliver the same documents to such purchaser, and should thereupon procure such purchaser to enter into a covenant with the said C. D. similar to the covenant thereinbefore contained, then the said covenant should cease and become void: AND WHEREAS, by an indenture dated, &c., and made, &c., for the consideration therein mentioned, such of the said hereditaments as were not so sold to the said C. D. as aforesaid, have been conveyed by the said E. F. unto and to the use of the said A. B., in fee simple: AND WHEREAS upon the treaty for the last-mentioned sale it was agreed that the said documents should be handed over to and held by the said A. B. as such purchaser as aforesaid, and that for the purpose of discharging the said E. F. from the obligation of the said covenant for that purpose contained in the said recited indenture of the — day of —, the said A. B. should give the acknowledgment and undertaking hereinafter contained: AND WHEREAS, in consequence of such arrangement the said C. D. hath delivered up to the said E. F. the said recited indenture of covenant, dated the — day of —: NOW the said A. B. hereby acknowledges the right of the said C. D. to production and delivery of copies of the documents mentioned in the schedule hereto, and he hereby undertakes for the safe custody thereof.

Parties.

Sale by original covenantor of part of hereditaments to which the deeds relate, and contemporaneous deed of covenant by him for production of deeds, &c., with a proviso for determining covenant on purchaser of remaining hereditaments entering into similar covenant.

Sale by original covenantor of remainder of hereditaments.

Arrangement that purchaser of remainder should hold deeds and give acknowledgments and undertaking.

As WITNESS, &c.

VOL. I.

G G

No. CLXIV.

**STATUTORY
DECLARATION
AS TO
IDENTITY.**

**STATUTORY DECLARATION *as to* IDENTITY of
LANDS contracted to be sold with PROPERTY to which a
TITLE is shown.**

I, A. B., of, &c. (*declarant*), solemnly and sincerely declare as follows:—

That declarant
knows the
property.

1. I know the farm and lands situate in the parish of —, known as — Farm, particularly described in the schedule hereto and delineated in the plan hereto annexed, and which farm and lands have been contracted to be sold by C. D., of, &c., to E. F., of, &c.

Or,

I know the piece of land [*or* the house and garden] situate at —, delineated and shown in the plan drawn in the margin of this declaration, and which, &c. (*as above*).

Possession of
property by
vendor and his
predecessor in
title.

2. The said farm and lands were formerly the property of F. D., the father of the said C. D., and were in his possession at the time of his death, which happened in the year 18—. On his death the same came into the possession of the said C. D., who has remained in possession or receipt of the rents and profits thereof up to this time.

Or,

The said piece of land is part of the land which was conveyed to F. D., the father of the said C. D., by an indenture dated the — day of —, 18—, by the following description, namely (*set out description verbatim*).

Or,

The site of the said house and garden is part of a piece of land which was conveyed, &c. (*as above*). The said F. D. built the house in the year 18—, and occupied the same as his residence with the said garden up to the time of his death, which happened on the — day of —, 18—. I have been shown an extract from his will, dated the — day of —, 18—, in the following words, namely, "I devise my house at — to my son C. D.," and I say that the testator had not at the date of his will, or at the time of his death, any house at — other than the house above described.

3. I am able to declare as above from having been the agent of the said C. D., and of his father, the said F. D., for the last — years and upwards, during the whole of which time I collected the rents of the property [*or* from having been the tenant of the property under the said C. D. and the said F. D. for the last — years and upwards, *or* from having lived in the parish of — for the last — years, and having been well acquainted during the whole of that time with the D. family]. And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

STATUTORY
DECLARATION
AS TO
IDENTITY.

Sources of
knowledge.

No. CLXV.

FORM of a MEMORIAL of DEED of CONVEYANCE of FREE- HOLDS in MIDDLESEX (b).

OF A CONVEY-
ANCE OF
FREEHOLDS.

A MEMORIAL to be registered of an indenture, bearing date the — day of —, and made between A. B., of, &c., of the

(b) The particulars to be observed in drawing memorials are as follows:—

Particulars to
be observed
in drawing
memorials.

The date of the deed or will must be mentioned, together with the names and additions of all the parties, and of the deviser (in the case of a will), and of all witnesses to the deed or will, and the places of their abode.

The description of the premises contained in the operative part of the deed should, in all cases, be set out in the memorial, and also that contained in any recital, to which the operative part of the deed has reference.

When a deed is indorsed on a former deed, and the parties and property are described by reference to the former deed, the memorial should give the dates of and parties to both deeds, together with the description of the premises from both deeds, and should state that the imported description is taken from the source referred to. (Reg. v. Registrars of Middlesex, 15 Q. B. 967; 19 L. J. Q. B. 537.)

How indorse-
ments should
be described.

Memorials must be under the hand and seal of some or one of the grantors, or some or one of the grantees, his or their heirs, executors, or administrators, guardians or trustees, attested by *two witnesses*, one whereof to be one of the witnesses to the execution of the deed, which witness must, upon oath, prove the execution of the memorial and the deed; and in the case of wills, the memorial must be under the hand and

Memorials,
how to be
executed and
attested.

**OF A CONVEY-
ANCE OF
FREEHOLDS.**

one part, and C. D., of, &c., of the other part: WHEREBY, for the considerations in the now memorialising indenture mentioned, the said A. B. did grant to the said C. D. ALL (*parcels, &c., as in the indenture, omitting the general words*): To HOLD, &c., WHICH said indenture, as to the execution thereof by the said A. B., is witnessed by E. F., of, &c., and as to the execution thereof by the said C. D. is witnessed by G. H., of, &c.

As witness the hand and seal of the said C. D.

Signed and sealed in the
presence of

C. D.

(*Two witnesses.*)

No. CLXVI.

**OF AN
ASSIGNMENT OF
LEASEHOLDS.**

FORM of MEMORIAL in CASES where the premises intended to be affected are expressed in the operative part of the DEED by reference to preceding recitals.

A MEMORIAL to be registered of an indenture, bearing date the — day of —, and made between A. B., of, &c., of the one part, and C. D., of, &c., of the other part: WHEREBY, after

seal of some or one of the devisees, his or their heirs, executors, or administrators, guardians or trustees, attested by two witnesses, one whereof shall, upon his oath, prove the signing and sealing of such memorial, and shall indorse a certificate thereof on every such memorial, and sign the same.

It is not necessary that one of the two attesting witnesses to the memorial should be a witness who attested the execution by the grantor. (*Reg. v. Lord Truro*, W. N. 1888, p. 158.) This is doubtful. (*See Jack v. Armstrong*, 1 Hud. & B. 727.)

Stamps on
memorials.

By 33 & 34 Vict. c. 97, the following stamp duty is imposed on every memorial to be registered, pursuant to any Act of Parliament made, or to be made, for the public registering of deeds and conveyances in England or Ireland (that is to say):—

Where the instrument registered is chargeable	} The same duty as the
with any duty not amounting to 2s. 6d.	
In any other case	registered instrument.
	2s. 6d.

reciting an indenture, dated the — day of —, purporting to be a lease of ALL THAT (*here set out the description verbatim from the recitals referred to by the operative part of the deed*):

OF AN
ASSIGNMENT OF
LEASEHOLDS.

AND also reciting another indenture, dated the — day of —, purporting to be a lease of all that (*the parcels*), for the considerations in the now memorialising indenture mentioned, the said A. B. did assign to the said C. D. the several pieces or parcels of ground, with the messuages or tenements thereupon erected, and all and singular other the premises comprised in and demised by the several thereinbefore in part recited indentures of lease, with the appurtenances: To HOLD, &c.; WHICH said indenture as to the execution thereof by the said A. B. is witnessed by E. F., of, &c., and as to the execution thereof by the said C. D. is witnessed by G. H. of, &c.

AS WITNESS the hand and seal of the said C. D.

Signed and sealed in the

presence of

C. D.

(*Two witnesses.*)

No. CLXVII.

FORM of MEMORIAL of an ENDORSED DEED.

OF AN
ENDORSED
DEED.

A MEMORIAL to be registered of an indenture, dated the — day of —, 18— (endorsed on an indenture dated the — day of —, 18—, and made between A. B., of, &c., of the one part, and C. D., of, &c., of the other part, a memorial whereof was registered on the — day of —, 18—, B. No. —). THE INDENTURE of which this is a memorial is made between the therein within-named C. D. of the one part, and E. F., of, &c., of the other part, whereby, for the considerations therein mentioned, the said C. D. did assign unto the said E. F., ALL AND SINGULAR the messuages or tenements, hereditaments and premises comprised in and demised by the therein within-written

OF AN
ENDORSED
DEED.

indenture with the appurtenances, and which premises are in the therein within-written indenture described as follows, that is to say: All that, &c. (*parcels*), To HOLD, &c.; WHICH indenture of assignment as to the execution thereof by the said A. B., is witnessed by E. F., of, &c., and as to the execution thereof by the said C. D. is witnessed by G. H., of, &c.

As witness the hand and seal of the said C. D.

Signed and sealed in the
presence of

C. D.

(*Two witnesses.*)

No. CLXVIII.

AWARD AS TO
COMPENSATION
FOR LANDS
TAKEN BY A
RAILWAY
COMPANY.

AWARD *as to* PURCHASE and COMPENSATION MONEY
to be paid in respect of LANDS *taken by a* RAILWAY
COMPANY (a).

Recite agree-
ment to refer
matter to
arbitration.

TO ALL TO WHOM THESE PRESENTS SHALL COME, I, A. B., of, &c. (*arbitrator*), SEND GREETING: WHEREAS by an instrument in writing dated the — day of —, and under the respective hands of C. D., of, &c. (therein stated to be the tenant for life of the lands and hereditaments thereafter mentioned), and E. F., of, &c., the Secretary of the — Railway Company (therein and hereinafter called “the company”), it was, in pursuance of the Lands Clauses Consolidation Act, 1845, referred to me as a single arbitrator to award and determine what sum of money ought to be paid by the company for the purchase of the inheritance in fee simple of the lands and hereditaments specified in the schedule thereunder written and coloured pink in the map thereunto annexed (of which schedule and map the schedule and map hereunder written and hereunto annexed are respectively copies), and also what further sum of money (if any) ought to be paid by the company as or by way of compensation for or in respect of the damage (if any) to be sustained by the owner of the said lands

(a) See 8 Vict. c. 18, s. 25.

and hereditaments by reason of the severing of the same lands and hereditaments from the other lands of such owner, or otherwise injuriously affecting such other lands by the exercise by the company of the powers of their Act or any Act incorporated therewith: NOW KNOW YE, that I, the said A. B., having taken upon myself the burthen of the said reference, and having, before entering into the consideration of the matters referred to me as aforesaid, duly made and subscribed in the presence of a justice duly authorised in that behalf the declaration required by the said Lands Clauses Consolidation Act, 1845 (which said declaration is hereunto annexed), and having viewed the lands and hereditaments hereinafter mentioned or referred to, and having heard what was alleged by or on behalf of the said parties respectively, and having heard and considered all such evidence as hath been produced before me, and having duly weighed and considered all and singular the matters and things to me referred as aforesaid, Do make and publish this my award in writing of and concerning the said matters, as follows (that is to say): I DO AWARD AND DETERMINE that the sum of £—— ought to be paid by the company for the purchase of the inheritance in fee simple of the said lands and hereditaments, and that the further sum of £—— ought to be paid by the company as or by way of compensation for or in respect of the damage to be sustained by the owner of the said lands and hereditaments by reason of the severing of the same from the other lands of such owner, or otherwise injuriously affecting such other lands by the exercise by the company of the powers of their Act or any Act incorporated therewith.

IN WITNESS, &c.

AWARD AS TO
COMPENSATION
FOR LANDS
TAKEN BY A
RAILWAY
COMPANY.

Award of
arbitrator.

THE SCHEDULE ABOVE REFERRED TO.

EXCHANGES.

No. I.

EXCHANGE BY
MUTUAL
CONVEYANCES.

EXCHANGES *by* SEPARATE MUTUAL CONVEYANCES (a).

Parties.

THIS INDENTURE, made the — day of —, BETWEEN
A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*pur-*

Proper form
of private
exchange.

(a) An exchange may be carried into effect either by one deed executed in duplicate or by two deeds. For an exchange by one deed, see the next Precedent. There is no advantage in the arrangement taking the form of a common-law exchange; and before the 8 & 9 Vict. c. 106, such form was objectionable from its making the title to the property given in exchange essential to the title to the property taken in exchange. By the 4th section of the Act above referred to, it is provided that an exchange or partition of any tenements or hereditaments made by deed shall not imply any condition in law.

Exchanges.

In cases where it may be difficult to carry into effect an exchange of corporeal or incorporeal hereditaments by private agreement, the same may be effected by the application in writing of the persons interested according to the definition contained in the 8 & 9 Vict. c. 118, ss. 16—21, to the Land Commissioners for England, who are invested with statutory powers for this purpose. (See 8 & 9 Vict. c. 118, s. 147; 9 & 10 Vict. c. 70, ss. 9—11; 10 & 11 Vict. c. 111, ss. 4, 6; 12 & 13 Vict. c. 83, ss. 7, 11; 15 & 16 Vict. c. 79, ss. 17, 31, 32; 17 & 18 Vict. c. 97, s. 5; 20 & 21 Vict. c. 31, ss. 4—11; 22 & 23 Vict. c. 43, ss. 10, 11; 45 & 46 Vict. c. 38, s. 48.) The exchange is perfected by an order of and under the hands and seal of the commissioners, so that no conveyance is necessary, and it is provided that the land taken upon every such exchange shall enure to, upon, and for the same uses, trusts, and purposes, and subject to the same conditions, charges, and incumbrances, as the lands given in such exchange would have stood limited, or been subject to, in case such order had not been made. (See 8 & 9 Vict. c. 118, s. 147.) The 4th section of the 10 & 11 Vict. c. 111, provides that exchanges of lands may be made excepting or reserving the mines or minerals, together with the rights and easements connected with such mines, and (whether such mines and minerals shall or shall not be reserved) such rights of way and other easements as the parties to the application may have agreed on; and the 6th section of the same Act empowers the Commissioners, with the consent of the lord of the manor, and the parties taking copyhold lands in exchange,

Exchanges
under the
Inclosure Acts.

chaser), of the other part. WHEREAS the said A. B. being seised in fee simple of the hereditaments comprised in the first schedule hereto, and the said C. D. being seised in fee simple of the hereditaments comprised in the second schedule hereto, have agreed to exchange the same: AND WHEREAS, in part performance of the said agreement, by an indenture bearing even date with these presents, and made between the said C. D. of the one part, and the said A. B. of the other part, the hereditaments comprised in the second schedule hereto have been conveyed by the said C. D. unto and to the use of the said A. B., in fee simple: NOW THIS INDENTURE WITNESSETH, that in further pursuance of the aforesaid agreement, and in consideration of the premises (*Conveyance by A. B., as beneficial owner, of the hereditaments comprised in the first schedule hereto unto and to the use of C. D., in fee simple*).

EXCHANGE BY
MUTUAL
CONVEYANCES.

Recital of
agreement for
exchange, and
of conveyance
to vendor of
land in second
schedule.

Witnessing
part.

Conveyance
of land in
first schedule.

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

THE SECOND SCHEDULE ABOVE REFERRED TO.

to declare that the same shall be held as freehold on such terms as may be agreed upon between the parties.

By the 11 & 12 Vict. c. 99, ss. 13, 14, the provisions of the 8 & 9 Vict. c. 118; 9 & 10 Vict. c. 70; and 10 & 11 Vict. c. 111, as to exchanges of lands not subject to be inclosed, are extended to partitions; and the 10th and 11th sections of the 22 & 23 Vict. c. 43, provide that lessees need not join in the application for partition, and that the provisions as to notice of dissent should not apply where the application is made by two-thirds in value of the persons interested in the land or other subject-matter of partition.

Partitions
under the
Inclosure Acts.

No. II.

**EXCHANGE BY
ONE DEED.**

EXCHANGE *by one and the same DEED where MONEY is paid by ONE of the EXCHANGING PARTIES to the OTHER for EQUALITY of EXCHANGE (b).*

Parties.

Mutual conveyances.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c., of the one part, and C. D., of, &c., of the other part, WITNESSETH, that in consideration of the conveyance by the said C. D. hereinafter contained, and of the sum of £— paid to the said A. B. by the said C. D. on or before the execution of these presents for equality of exchange (the receipt whereof the said A. B. hereby acknowledges), THE SAID A. B., as beneficial owner, hereby conveys unto the said C. D., ALL, &c. (*parcels*): To HOLD the same unto and to the use of the said C. D. in fee simple: AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the conveyance by the said A. B. hereinbefore contained, the said C. D., as beneficial owner, hereby conveys unto the said A. B., ALL, &c. (*parcels*): To HOLD the same unto and to the use of the said A. B. in fee simple.

IN WITNESS, &c.

No. III.

**EXCHANGE BY
TENANT FOR
LIFE UNDER
POWERS OF
SETTLED LAND
ACT.**

CONVEYANCE *by way of EXCHANGE by a TENANT for LIFE with the CONSENT of his MORTGAGEE, under the POWERS of the SETTLED LAND ACT, 1882. A SUM is PAID to the TRUSTEES by way of EQUALITY of EXCHANGE (c).*

Parties.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*tenant for life*), of the first part, C. D., of, &c.

(b) The stamp on this deed will be an *ad valorem* as on a sale in respect of the sum paid for equality of exchange, if that sum exceeds £100, but if not, then a 10s. stamp. (33 & 34 Vict. c. 97, s. 94.) See, also, Sched. under head "Exchange."

(c) See the Settled Land Act, 1882, ss. 3, 20, 22.

(mortgagee), of the second part, L. M., of, &c., and N. O., of, &c. (trustees), of the third part, and X. Y. (purchaser), of the fourth part, WHEREAS (*recite settlement*): AND WHEREAS the said L. M. and N. O. are the present trustees of the said settlement for the purposes of the Settled Land Act, 1882 (*d*): AND WHEREAS, by an indenture dated, &c., and made, &c., the life estate of the said A. B. in the hereditaments so settled as aforesaid was conveyed by the said A. B. unto the said C. D. by way of mortgage for securing the payment by the said A. B. to the said C. D. of the sum of £500 and interest as therein mentioned: AND WHEREAS, in exercise of the power for this purpose contained in the Settled Land Act, 1882, the said A. B. hath agreed to make an exchange with the said X. Y. of the hereditaments hereinafter described (being part of the hereditaments settled by the hereinbefore mentioned indenture as aforesaid), for the hereditaments comprised in the indenture of even date herewith lately the property of the said X. Y., and in consideration of the sum of £—— to be paid by the said X. Y. by way of equality of exchange: AND WHEREAS by an indenture bearing even date with but executed before these presents, and made between the said X. Y. of the first part, the said A. B. of the second part, the said C. D. of the third part, and the said L. M. and N. O. of the fourth part, in consideration of the conveyance hereinafter contained on the part of the said A. B., &c., ALL, &c. (*parcels*), have been conveyed by the said X. Y. by the direction of the said A. B. and with the consent of the said C. D. unto the said L. M. and N. O., in fee simple, TO THE USES, upon the trusts and subject to the powers and provisions which, under the said indenture of settlement or by reason of the exercise of any power of charging therein contained, are subsisting with respect to the hereditaments settled by the said indenture or as near thereto as circumstances will permit, but not so as to increase or multiply charges or powers of charging: NOW THIS INDENTURE WITNESSETH, that in consideration of the hereinbefore recited conveyance by the said X. Y., and of the sum of £—— paid by him to the said L. M. and N. O. as such trustees as aforesaid, on or before the execution of these presents, the said A. B., in exercise of such power

EXCHANGE BY
TENANT FOR
LIFE UNDER
POWERS OF
SETTLED LAND
ACT.

Present
trustees of
settlement
trustees for
purposes of
Settled Land
Act.

Mortgage by
tenant of his
life estate.

Agreement
for exchange.

Conveyance
of land by
deed of even
date to uses of
settlement.

In considera-
tion of con-
veyance of
even date,
and of sum
paid for
equality of
exchange,

(d) See note (r), *supra*, p. 303.

EXCHANGE BY
TENANT FOR
LIFE UNDER
POWERS OF
SETTLED LAND
ACT.

Tenant for life
with consent
of mortgagee,
conveys
parcels
to purchaser
in fee.

Acknowledg-
ment by tenant
for life of right
of purchaser to
production of
indenture of
settlement.

as aforesaid, and of all other powers (if any) him hereunto enabling, and as beneficial owner, doth hereby, with the consent of the said C. D., convey unto the said X. Y., ALL, &c. (*parcels*), To HOLD the same unto and to the use of the said X. Y., in fee simple: AND THE SAID A. B. hereby acknowledges the right of the said X. Y. to production of the said recited indenture of settlement, and to delivery of copies thereof, and hereby undertakes for the safe custody thereof.

IN WITNESS, &c.

PARTITION DEEDS.

No. I.

DEED of PARTITION by Three Co-HEIRESESSES, one of whom PARTITION BY
CO-HEIRESESSES.
pays a SUM by way of Equality of PARTITION (e).

THIS INDENTURE, made the — day of —, BETWEEN Parties.
A. B. of, &c., spinster (*one daughter and co-heiress*), of the first
part, C. D. of, &c., spinster (*another daughter and co-heiress*), of
the second part, E. F. of, &c., spinster (*third daughter and co-
heiress*), of the third part, and G. H. of, &c. (*grantee to uses*), of
the fourth part (*Recite conveyance of property comprised in the* Recite con-
veyance to
intestate, and
his death,
leaving
co-heiresses.
Agreement
for partition,
*schedules to these presents to M. N., and his decease intestate,
leaving no son, but leaving the said A. B., C. D., and E. F.,
his only daughters and co-heiresses*): AND WHEREAS it was
lately agreed between the said A. B., C. D., and E. F., that
a partition should be made between them of the hereditaments
comprised in the several schedules hereunder written, so that
the entirety of the hereditaments comprised in the first schedule
should be taken in severalty by the said A. B., and the
entirety of the hereditaments comprised in the second schedule
should be taken in severalty by the said C. D., and the
entirety of the hereditaments comprised in the third schedule
should be taken in severalty by the said E. F.: AND it was

(e) A partition deed should be executed in as many parts as there are Difference
between dupli-
cate and
counterpart
deeds.
co-owners. Thus, in the above case, it should be executed in triplicate,
and every part should be executed by all the parties, so as to be an
original deed, and as such primary evidence. A counterpart as distin-
guished from a duplicate or triplicate original, is where each part is
executed by one party only, and is primary evidence against that party,
and secondary evidence against the other. (Taylor on Evidence, 301.)

**PARTITION BY
CO-HEIRESESSES.**

and for pay-
ment of a sum
for equality of
partition.

Consideration.

Conveyance
by co-
heireesses of

hereditaments
in first sche-
dule to one
co-heiress,

hereditaments
in second
schedule to
another
co-heiress,
and heredita-
ments in third
schedule to
the third
co-heiress.

also agreed that the said E. F. should pay for equality of par-
tition the sum of £200 to the said A. B. and C. D. in equal
shares: NOW THIS INDENTURE WITNESSETH, that in
consideration of the sum of £200 to the said A. B. and C. D. in
equal shares paid by the said E. F. on or before the execution
of these presents (*the receipt whereof, &c.*), and in consideration
of all the other premises, THE SAID A. B., C. D., and E. F., as
to their several undivided third parts or shares, and as beneficial
owners, hereby convey unto the said G. H., ALL the pieces or
parcels of land and other hereditaments described and comprised
in the first, second, and third schedules hereunder written, To
HOLD the same unto the said G. H. in fee simple, To THE USES
following (that is to say): As to the hereditaments comprised
in the first schedule hereunder written, To the use of the said
A. B., in fee simple: As to the hereditaments comprised in the
second schedule hereunder written, To the use of the said C. D.,
in fee simple: AND AS TO the hereditaments comprised in the
third schedule hereunder written, To the use of the said E. F.,
in fee simple.

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

THE SECOND SCHEDULE ABOVE REFERRED TO.

THE THIRD SCHEDULE ABOVE REFERRED TO.

No. II.

PARTITION of FREEHOLDS and COPYHOLDS and LEASEHOLDS by THREE PERSONS who are interested in the FREEHOLDS and COPYHOLDS as coparceners, and in the LEASEHOLDS as TENANTS IN COMMON. A part of the FREEHOLDS and COPYHOLDS is allotted to each, and the TWO LEASEHOLD HOUSES are allotted equally to two out of the three TENANTS IN COMMON at an apportioned RENT in respect of each HOUSE.

PARTITION OF
FREEHOLDS,
COPYHOLDS,
AND
LEASEHOLDS.

THIS INDENTURE, made the — day of —, BETWEEN Parties.

A. B., of, &c. (*one daughter*), of the first part, C. D., of, &c. (*another daughter*), of the second part, E. F., of, &c. (*the other daughter*), of the third part, and G. H., of, &c. (*grantee*), of the fourth part: WHEREAS L. M., late of, &c., being seised in fee simple of the freehold hereditaments comprised in the first, second, and third schedules hereunder written, and being seised, or entitled in customary fee simple of or to the copyhold hereditaments comprised in the fourth, fifth, and six schedules hereunder written, according to the custom of the manor of —, of which the same are holden, died on the — day of —, intestate, leaving the said A. B., C. D., and E. F., his only daughters and co-heiresses, him surviving: AND WHEREAS by an indenture dated the — day of —, and made between (*parties*), the two messuages or dwelling-houses situate —, and being respectively Nos. —, were demised unto the said A. B., C. D., and E. F., their executors, administrators, and assigns, as tenants in common for a term of fourteen years, at the yearly rent of £10, and subject to the covenants and conditions therein contained, and on the part of the lessees, to be observed and performed: AND WHEREAS it was lately agreed between the said A. B., C. D., and E. F., that a partition should be made between them of the said freehold, copyhold, and leasehold hereditaments, so that the freehold and copyhold hereditaments comprised in the said first and fourth schedules respectively should be taken in severalty by the said A. B.; that the freehold and copyhold heredita-

Testator's
seisin of free-
holds and
copyholds;

and his death
intestate,
leaving his
three
daughters
co-heiresses.
Lease of two
messuages to
three
daughters
as tenants
in common.

Agreement
for partition.

**PARTITION OF
FREEHOLDS,
COPYHOLDS,
AND
LEASEHOLDS.**

Conveyance
of freeholds.

As to certain
hereditaments
to one
daughter ;

as to other
hereditaments
to another
daughter.

Covenants by
two daughters
to surrender
copyholds
to other
daughter.

Assignment by
two daughters
of their shares

ments comprised in the said second and fifth schedules respectively, and the said leasehold messuage and premises being No. —, should be taken in severalty by the said C. D.; and the freehold and copyhold hereditaments comprised in the said third and sixth schedules respectively, and the said leasehold messuage and premises being No. —, should be taken in severalty by the said E. F.: NOW THIS INDENTURE WITNESSETH, that in consideration of the premises the said A. B., C. D., and E. F., according to their several shares and interests, and as beneficial owners, do hereby convey unto the said G. H., ALL the messuages or tenements, lands and hereditaments, described and comprised in the first, second, and third schedules hereunder written: To HOLD the same unto the said G. H., in fee simple, to the uses following, that is to say, As to THE hereditaments comprised in the said first schedule, To the use of the said A. B., in fee simple: As to THE hereditaments comprised in the said second schedule, To the use of the said C. D., in fee simple: AND AS TO THE hereditaments comprised in the said third schedule, To the use of the said E. F., in fee simple: AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the premises, THE said C. D. and E. F., as beneficial owners, hereby covenant with the said A. B. that they the said C. D. and E. F. respectively, will at the cost of the said A. B., forthwith surrender into the hands of the lord or lady of the said manor, ALL those the two undivided third parts or shares of the said C. D. and E. F. respectively of and in the copyhold hereditaments comprised in the fourth schedule hereunder written, To the use of the said A. B., in customary fee simple, at the will of the lord of the said manor according to the custom thereof, by and under the rents, suits, and services therefor due and of right accustomed (*Similar covenants by A. B. and E. F. with C. D. to surrender their shares in the copyhold hereditaments comprised in the fifth schedule to the use of C. D., and by A. B. and C. D. with E. F. to surrender their shares in the copyhold hereditaments comprised in the sixth schedule to the use of E. F.*): AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the premises, the said A. B. and C. D., as beneficial owners, hereby assign unto the said E. F., ALL those the two undivided third parts or shares of the said A. B. and C. D. respectively, of and

in ALL, &c. (*one of the messuages comprised in the indenture of lease*): To HOLD the same unto the said E. F., for all the residue now unexpired of the said term of fourteen years, to the intent that the said E. F. may henceforth be possessed of the entirety of the said messuage and premises for the residue of the said term, subject to the payment of the yearly rent of £5, being one moiety of the said rent of £10 reserved by the said recited indenture of lease, and to the covenants and conditions in the said indenture of lease contained, and on the part of the lessee, to be observed and performed respectively, so far as the same relate to the said messuage and premises: AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the premises, the said A. B. and E. F., as beneficial owners, hereby assign unto the said C. D., ALL those the two undivided third parts or shares of the said A. B. and E. F. respectively, of and in ALL, &c. (*the other of the messuages comprised in the indenture of lease*): To HOLD the same unto the said C. D., for all the residue now unexpired of the said term of fourteen years, to the intent that the said C. D. may be henceforth possessed of the entirety of the last-mentioned messuage and premises for the residue of the said term, subject to the payment of the yearly rent of £5, &c. (*as before*), AND THE SAID C. D. hereby covenants with the said A. B. and E. F., THAT the said C. D., her executors, administrators, or assigns, will at all times hereafter during the said term of fourteen years granted by the said indenture of lease, pay the yearly rent of £5 in respect of the said messuage and premises No. —, &c., and observe and perform the covenants and conditions in the said indenture of lease contained, and which henceforth on the part of the lessee ought to be observed and performed, so far as the same relate to the last-mentioned messuage and premises; and will at all times hereafter keep indemnified the said A. B. and E. F., and their estates and effects, from the payment of the said rent of £5, and the performance of the said covenants and conditions relating to the last-mentioned messuage and premises, and from all claims and demands on account of the same: AND ALSO that in case the said A. B. and E. F., or their respective executors, administrators, or assigns, or any or either of them, shall at any time or times hereafter pay or incur any sum or sums of money, costs, charges, damages, or expenses for or on account of the

PARTITION OF
FREEHOLDS,
COPYHOLDS,
AND
LEASEHOLDS.

in one lease-
hold messuage,
to the other
daughter at
apportioned
rent.

Assignment by
two daughters
of their shares
in other lease-
hold house to
the other
daughter at
apportioned
rent.

Covenant by
one daughter
to pay rent
and observe
covenants in
respect of
leasehold pre-
mises taken
by her.

PARTITION OF
FREEHOLDS,
COPYHOLDS,
AND
LEASEHOLDS.

said yearly rent of £5, covenants and conditions hereinbefore covenanted to be paid, observed, and performed by the said C. D., then and in such case, and so often as the same shall happen, it shall be lawful for the person or persons by whom such sum or sums of money, costs, charges, damages, or expenses shall be paid or incurred as aforesaid, into and upon the messuage and premises hereinbefore assigned unto the said C. D., to enter and distrain for the same, and to dispose of the distress or distresses then and there found, according to law, as landlords may for rents reserved upon leases for years, to the intent that thereby she, he, or they shall and may be fully paid, and satisfied all and every such sums and sum of money, costs, charges, damages and expenses, as aforesaid: AND ALSO that in case and so often as aforesaid it shall be lawful for the person or persons, by whom such sum or sums of money, costs, charges, damages, or expenses, shall be paid or incurred as aforesaid, to enter into and upon and to hold all or any part of the last-mentioned messuage and premises, and to receive the rents and profits thereof, for her, his, and their own use until she, he, or they shall thereby or otherwise be fully paid and satisfied the same (*Similar covenants by E. F. to pay rent and observe covenants in respect of the premises taken by her, and grant to A. B. and C. D. of similar powers of distress and entry for securing the payment of such rent and observance of covenants*).

IN WITNESS, &c.

THE FIVE SCHEDULES WILL FOLLOW.

No. III.

PARTITION BY
TENANT FOR
LIFE UNDER
POWERS OF
SETTLED LAND
ACT.

PARTITION of FREEHOLDS one MOIETY whereof has been made the SUBJECT of SETTLEMENT, and the TENANT FOR LIFE thereunder EXERCISES the POWERS of PARTITIONING conferred by the SETTLED LAND ACT, 1882.

Parties.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*tenant for life*), of the first part, C. D., of, &c., and

E. F., of, &c. (*trustees*), of the second part, G. O., of, &c. (*owner of the other undivided moiety*), of the third part, and J. K., of, &c. (*grantee to uses*) of the fourth part: WHEREAS by an indenture dated, &c., and made between L. M. of the one part, and N. O. of the other part, for the consideration therein mentioned, the hereditaments comprised in the first and second schedules hereto were conveyed by the said L. M. unto and to the use of the said N. O. in fee simple: AND WHEREAS the said N. O. died on the — day of — intestate, leaving the said A. B. then A. O. and G. O. his only children and co-heiresses-at-law: AND WHEREAS by an indenture dated the — day of —, and made between L. B. of the first part, the said A. B. then A. O. of the second part, and the said C. D. and E. F. (*trustees*) of the third part, being a settlement made in contemplation of the marriage which was shortly afterwards solemnized between the said L. B. and the said A. B., the undivided moiety or equal half part of the said A. B. in the hereditaments comprised in the first and second schedules hereto, was (with other hereditaments) conveyed by the said A. B. unto the said C. D. and E. F. and their heirs, To the use of the said A. B. in fee simple until the said intended marriage, and after the solemnization thereof, To the use of the said A. B. for her life for her separate use and subject thereto, To the uses therein declared concerning the same; and by the indenture now in recital the said C. D. and E. F. were empowered to sell the hereditaments thereby settled, or any part thereof, upon the request of the said A. B. during her life: AND WHEREAS the said A. B. and G. O. have respectively agreed to make a partition of the hereditaments comprised in the first and second schedules hereto, and on the treaty for such partition it was agreed that the hereditaments comprised in the first schedule hereto should be taken in severalty by the said A. B. and her successors in title, and that the hereditaments comprised in the second schedule hereto should be taken in severalty by the said G. O., and that the sum of £100 should be paid by the said G. O. for equality of partition, to the said C. D. and E. F. as such trustees as aforesaid: NOW THIS INDENTURE WITNESSETH, that in pursuance of the aforesaid agreement in this behalf, and in consideration of the sum of £100 to the said C. D. and E. F. as the trustees of the said indenture of settle-

PARTITION BY
TENANT FOR
LIFE UNDER
POWERS OF
SETTLED LAND
ACT.

Recite conveyance of hereditaments in first and second schedules to N. O.
Death of N. O. intestate.

A. B. and G. O. only children.

Settlement of A. B.'s share.

To the use of herself for life for her separate use.

Power to the trustees to sell at request of tenant for life.

Agreement between A. B. and G. O. for partition.

Consideration.
£100 paid by G. O. to

PARTITION BY
TENANT FOR
LIFE UNDER
POWERS OF
SETTLED LAND
ACT.

trustees of
settlement.

A. B. as tenant
for life in
exercise of
power of
Settled Land
Act as to one
moiety,
and G. O. as
to other
moiety, convey
to J. K.

As to heredita-
ments in first
schedule.

To use of G. O.

As to heredita-
ments in
second
schedule.

To uses of the
said indenture
of settlement.

Acknowledg-
ment by A. B.
of G. O.'s
right to pro-
duction of said
indenture of
settlement,
and under-
taking for safe
custody.

ment paid by the said G. O. on or before the execution of these presents by the direction of the said A. B., (the receipt whereof the said C. D. and E. F. hereby acknowledge,) the said A. B. as to the one undivided moiety comprised in the said indenture of settlement of and in the hereditaments intended to be hereby conveyed, in exercise of the power for this purpose vested in her by the Settled Land Act, 1882, and of all other powers (if any) her hereunto enabling, and as beneficial owner, hereby conveys, and the said G. O. as to the other undivided moiety of and in the said hereditaments and as beneficial owner, hereby also conveys unto the said J. K.: ALL the hereditaments described in the first and second schedules hereunder written, To HOLD the same unto the said J. K. in fee simple, To THE USES follow- ing, namely, As to the hereditaments comprised in the first schedule hereunder written: To the use of the said G. O. in fee simple: AND AS TO the hereditaments comprised in the second schedule hereunder written: To THE USES, upon the trusts, and subject to the powers and provisions which under the said indenture of settlement or by reason of any power of charging therein contained, were immediately before the execution of these presents subsisting in the undivided moiety of the said hereditaments comprised in that indenture: (*Proviso qualifying A. B.'s statutory covenants, supra*, p. 301,) AND THE SAID A. B. hereby acknowledges the right of the said G. O. to production of the said indenture of settlement of the — day of —, and to delivery of copies thereof, and hereby undertakes for the safe custody thereof.

IN WITNESS, &c.

THE FIRST SCHEDULE HERETO.

THE SECOND SCHEDULE HERETO.

ENLARGEMENT OF TERM DEEDS.

No. I.

DEED (a) to CONVERT a LONG TERM of YEARS into a FEE
SIMPLE by a person ABSOLUTELY ENTITLED thereto (b).

ENLARGEMENT
OF TERM INTO
FEE SIMPLE BY
ABSOLUTE
OWNER.

TO ALL TO WHOM THESE PRESENTS SHALL COME,

A. B., of, &c., SENDS GREETING: WHEREAS by an indenture dated, &c., and made between X. Y., of the one part, and the said A. B., of the other part, for the consideration therein mentioned, a messuage or dwelling-house and other hereditaments situate —, were demised by the said X. Y. unto the said A. B. for the term of 1000 years thence next ensuing at a peppercorn rent, and subject to the lessee's covenants as to user and enjoyment of the premises as therein contained, but the said indenture contains no clause or provision whereby the said term can be determined by re-entry for condition broken: NOW THE said A. B., by virtue of the Conveyancing and Law of Property Act, 1881, section 65, hereby declares that the said term of 1000 years as to all the premises therein comprised shall henceforth be enlarged into a fee simple.

Recite demise
for long term
subject to
nominal rent
and covenants
as to user.

Enlargement
by owner of
term into fee
simple.

IN WITNESS, &c.

(a) The stamp on this deed is 10s.

(b) See Conveyancing Act, 1881, s. 65; Conveyancing Act, 1882, s. 11. The following are illustrations of the exceptions in sect. 11 of the Act of 1882:—1. If property is held for a term, of which 200 years at least remains unexpired, at a nominal rent, but the term is liable to be determined by re-entry according to the terms of the document creating the term for breach of the lessee's covenants or otherwise, such a term could not be enlarged into a fee simple, although the rent is only nominal.

Provisions of
Act for
enabling a
long term to
be enlarged
into a fee
simple.

2. If a 500 years' term, held at a peppercorn rent, and not liable to be determined by re-entry for condition broken, were subdemised for 400 years at a rent of no money value, the sub-tenant could enlarge the 500 years' term into a fee simple, provided 200 years of the sub-term remained unexpired; but he could not do this if the superior term were held at a beneficial rent, or subject to covenants in respect of which the reversioner might enter for condition broken.

No. II.

**ENLARGEMENT
OF TERM BY
EXECUTORS.**

**DEED by EXECUTORS to CONVERT a LONG TERM of YEARS
into a FEE SIMPLE**

Recite will
appointing
executors.

That testator
at his death
was entitled to
leaseholds held
for long term.

Declaration
by executors
that term shall
be enlarged
into a fee
simple.

TO ALL TO WHOM THESE PRESENTS SHALL COME,
A. B., of, &c., and C. D., of, &c., SEND GREETING: WHEREAS
G. H., late of, &c., made his will, dated, &c., and thereby (*inter
alia*) he appointed the said A. B. and C. D. executors of his said
will. (*Death of the said G. H. and probate of his will.*) AND
WHEREAS the said testator at the time of his death was pos-
sessed of a messuage or dwelling-house and premises situate at
—, and known by the name of — for the unexpired resi-
due of a term of 999 years under an indenture of lease dated
the — day of —, and made between, &c.: AND WHEREAS
the said messuage or dwelling-house and premises are held
under the said indenture of lease at a peppercorn rent, and such
indenture contains no clause or provision whereby the said term
can be determined by re-entry for condition broken: NOW THE
SAID A. B. and C. D., by virtue of the Conveyancing and Law
of Property Act, 1881, section 65, hereby declare that the said
term of 999 years as to all the premises therein comprised shall
henceforth be enlarged into a fee simple.

IN WITNESS, &c.

No. III.

**ENLARGEMENT
OF TERM BY
MORTGAGEE
WHO HAS
BECOME ABSO-
LUTE OWNER
INTO FEE
SIMPLE.**

**DEED to CONVERT a LONG TERM of YEARS into a FEE
SIMPLE by a MORTGAGEE who has become ABSOLUTE
OWNER by ADVERSE POSSESSION.**

Recite mort-
gage for long
term;

TO ALL TO WHOM THESE PRESENTS SHALL COME,
A. B., of, &c., SENDS GREETING: WHEREAS, by an indenture
dated, &c., and made between L. M., of the one part, and the

said A. B., of the other part, the lands and hereditaments situate in the parish of —, in the county of —, therein particularly described, were demised by the said L. M. unto the said A. B., his executors, administrators, and assigns, for the term of 500 years thence next ensuing without impeachment of waste by way of mortgage for securing the payment by the said L. M. unto the said A. B. of the sum of £400 and interest as therein recited: AND WHEREAS no part of the said mortgage debt of £400 having been paid, the said A. B. entered into possession of the said premises in the year —, and has ever since remained in uninterrupted possession and enjoyment thereof, without having in any respect acknowledged the title of the said L. M., or of his right of redemption, and has consequently become the absolute owner of the premises for all the now unexpired residue of the said term of 500 years: NOW the said A. B., by virtue of the Conveyancing and Law of Property Act, 1881, section 65, hereby declares that the said term of 500 years as to all the premises therein comprised, shall henceforth be enlarged into a fee simple.

IN WITNESS, &c.

ENLARGEMENT
OF TERM BY
MORTGAGEE
WHO HAS
BECOME ABSO-
LUTE OWNER
INTO FEE
SIMPLE.

that mortgage
debt was not
paid,
and that
mortgagee
took possession
and acquired
absolute title
to term by
adverse
possession.

Enlargement
of the said
term by mort-
gagee who has
become abso-
lute owner into
fee simple.

No. IV.

DEED to CONVERT a LONG TERM of YEARS into a FEE SIMPLE by a MARRIED WOMAN having an EQUITABLE ESTATE for LIFE for her SEPARATE USE WITHOUT POWER of ANTICIPATION (c).

ENLARGEMENT
OF TERM BY
MARRIED
WOMAN
HAVING EQUIT-
ABLE ESTATE
FOR LIFE FOR
SEPARATE USE,
ETC.

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B., the wife of C. B., of, &c., SENDS GREETING: WHEREAS, by an indenture dated the — day of —, and made between, &c. (parties), ALL that, &c. (parcels), were demised unto L. M.

Recite deed
whereby par-
cels were
demised for
700 years.

(c) This deed does not require acknowledgment by the married woman, or the concurrence of her husband. It is considered clear that a beneficial tenant for life is "a person beneficially entitled in right of the term to possession," within the meaning of sub-sect. 2 of sect. 65 of the Act.

**ENLARGEMENT
OF TERM BY
MARRIED
WOMAN
HAVING EQUIT-
ABLE ESTATE
FOR LIFE FOR
SEPARATE USE,
ETC.**

Will by owner
of term of all
his property to
trustees for
daughter for
life for sepa-
rate use with-
out power of
anticipation.

Enlargement
by married
woman en-
titled as above
of the said
term into fee
simple.

for the term of 700 years thence next ensuing at a peppercorn rent, and the said indenture contains no clause or provision whereby the said term can be determined by re-entry for condition broken: AND WHEREAS N. O., late of, &c., having become entitled to the said premises for the unexpired residue of the said term, made his will dated the — day of —, 18—, and thereby gave all his real and personal estate to P. Q. and R. S. upon trust for the testator's daughter, the said A. B., during her life, for her separate use without power of anticipation, and after her death in trust for the children of the said A. B., as therein mentioned, and the said testator appointed the said P. Q. and R. S. executors of his said will (*Recite death of testator and probate of the will*): NOW the said A. B., by virtue of the Conveyancing and Law of Property Act, 1881, section 65, hereby declares that the said term of 700 years, as to all the premises therein comprised, shall henceforth be enlarged into a fee simple.

IN WITNESS, &c.

No. V.

**ENLARGEMENT
OF TERM INTO
FEE SIMPLE BY
HUSBAND AND
WIFE.**

**DEED to CONVERT a LONG TERM of YEARS into a FEE
SIMPLE by HUSBAND AND WIFE (d).**

Enlargement
by husband
and wife of
long term into
fee simple.

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B., of, &c., and C., his wife, SEND GREETING (*recite creation of term for 700 years and other recitals showing that it became vested in C. B. before 1883, and that C. B. married before that date*): NOW the said A. B., and C., his wife, by virtue of the Conveyancing and Law of Property Act, 1881, s. 65, hereby declare that the said term of 700 years, as to all the premises therein comprised, shall henceforth be enlarged into a fee simple.

IN WITNESS, &c.

(d) This deed does not require acknowledgment by the married woman.

No. VI.

DEED *to convert a LONG TERM of YEARS into a FEE SIMPLE by a TENANT FOR LIFE of a SETTLED ESTATE (by INDORSEMENT on the SETTLEMENT).*

ENLARGEMENT
OF TERM INTO
FEE BY TENANT
FOR LIFE OF
SETTLED
ESTATE.

KNOW ALL MEN BY THESE PRESENTS that I, the within-named A. B., being beneficially entitled under the within-written indenture to the possession of the lands and hereditaments comprised in the term of 1,000 years created by the within-recited indenture of the — day of —, 18—, and which lands and hereditaments were by the within-written indenture assigned unto the within-named E. F. and G. H. for the unexpired residue of the said term, by virtue of the Conveyancing and Law of Property Act, 1881, s. 65, hereby declare that the said term of 1,000 years, as to all the premises therein comprised, shall henceforth be enlarged into a fee simple.

Enlargement
by tenant for
life of long
term into fee
simple.

IN WITNESS, &c.

No. VII.

CONVEYANCE of LAND *held for a LONG TERM of YEARS, and SETTLED in trust by REFERENCE to FREEHOLD LAND, and which TERM has been ENLARGED into a FEE SIMPLE to the USES of the FREEHOLDS.*

CONVEYANCE
OF LAND HELD
FOR TERM
SETTLED BY
REFERENCE TO
FREEHOLDS,
AND ENLARGED
TO USES OF
FREEHOLDS.

THIS INDENTURE, made the — day of —, BETWEEN the within-named E. F. and G. H. (*trustees of the settlement*), of the one part, and I. K., of, &c. (*grantee to uses*), of the other part: WITNESSETH that, pursuant to the direction in this behalf contained in the Conveyancing and Law of Property Act, 1881, s. 65, the said E. F. and G. H., as trustees, hereby convey unto the said I. K., ALL the lands and hereditaments which by the within-written indenture were assigned unto the

Parties.

Pursuant to
direction in
Conveyancing
Act.
Trustees of
settlement
convey parcels
comprised in

CONVEYANCE
OF LAND HELD
FOR TERM
SETTLED BY
REFERENCE TO
FREEHOLDS,
AND ENLARGED
TO USES OF
FREEHOLDS.

term which
has been
enlarged.

To uses of
settled free-
holds.

said E. F. and G. H. for the unexpired residue of a term of 1,000 years, created by the within-written indenture of the — day of —, and which term has been enlarged into a fee simple by the above-written deed poll, dated the day before the date of these presents: To HOLD the same unto the said I. K. in fee simple, To THE USES, upon the trusts, and with and subject to the powers and provisions by and in the within-written indenture declared and contained of and concerning the freehold hereditaments thereby settled, or such of them as are now subsisting and capable of taking effect.

IN WITNESS, &c.

MORTGAGES.

It is proposed in this Dissertation to consider—

I. The usual form of a mortgage of freehold, copyhold, and leasehold property respectively. II. Equitable mortgages by deposit of title deeds. III. The nature and incidents of the mortgagor's estate, and particularly his right or equity of redemption. IV. The remedies of the mortgagee to recover his debt. V. The powers, duties, and liabilities of a mortgagee in possession. VI. The effect of the Statutes of Limitation as between mortgagor and mortgagee. VII. The order of liability of the mortgaged property and the general estate of the mortgagor or other person liable to the debt. VIII. Mortgages under powers including mortgages by executors. IX. The rights and priorities of several mortgagees and incumbrancers amongst themselves, the protection afforded to purchasers and mortgagees against concealed trusts and incumbrances by the possession of the legal estate, the doctrine of tacking, notice actual and constructive, and the consequence of laches on the part of a mortgagee particularly in reference to the title deeds. X. Some precautions to be observed by a person advancing money on mortgage. XI. Transfers of mortgages and reconveyances. XII. Stamps on mortgages and deeds relating to mortgages.

Division of the subject.

I. *The usual form of a mortgage of freehold, copyhold, and leasehold property respectively.*

A mortgage is a conveyance of property to secure the payment of money or money's worth. Its ordinary

Ordinary form of mortgage of freeholds.

form is a conveyance by the mortgagor to the mortgagee, subject to a proviso or condition for a reconveyance on payment of the money intended to be secured on a day named, which is usually six months from the date of the deed. The conveyance is preceded or followed by covenants by the mortgagor with the mortgagee for payment of principal and interest on the appointed day, and if the principal is not paid on that day, for the future payment of interest half-yearly. Under the latter covenant arrears of interest can be sued for without requiring payment of the principal. If the property consists of houses or buildings, there should be a covenant for insurance against fire. Before the recent Act, covenants for title and a power of sale were added.

Ordinary form
of mortgage of
copyholds.

A mortgage of copyholds is usually effected by: (1) a deed whereby the mortgagor covenants to surrender the copyholds to the mortgagee, subject to a condition for making the surrender void on payment of principal and interest on a given day, which deed also contains covenants for payment of principal and interest, and for insurance (if necessary), similar to those in a mortgage of freeholds; and (2) a conditional surrender in accordance with the covenant in the deed. The mortgagee is seldom admitted, as that would involve the payment of a fine, and would render the mortgagee liable to the customary services; and it would also involve the necessity of a re-admission of the mortgagor on the mortgage being paid off. On the repayment of the mortgage-money, the mortgagee, if he has not been previously admitted, usually gives a warrant to the steward to vacate the surrender, and executes a release by deed to the mortgagor of the mortgaged property.

Ordinary form
of mortgage of
leaseholds.

Mortgages of leaseholds are made either by assignment for all the term and interest of the mortgagor, or by underlease for all the term except the last day or the last few days. The latter course should generally be adopted where the rent reserved by the lease is more than nominal, or the covenants are onerous; for if the mortgagee takes an assignment, a privity is

established between him and the lessor, and he may be sued for the rent or for a breach of any of the covenants.

The proviso for redemption should provide for the reconveyance of the property to the mortgagor, according to his former estate, or if the property is in settlement, to the uses subsisting under such settlement.

Form of
proviso for
redemption.

If it is intended that the deed shall operate not only as a mortgage, but also as a resettlement of the property to different uses, or so as to alter in some mode the rights and interests existing in it subject to the mortgage, such an intention should be clearly expressed.

A mere reservation of the right of redemption to uses differing from the prior uses, will not be sufficient if the difference is such as may be supposed to arise from inaccuracy or mistake(*a*). If, however, the difference is such as to show clearly an intention to alter the existing uses, such an intention will prevail. Thus, if on a mortgage by a tenant in fee the equity of redemption should be reserved to him in tail, the land would, subject to the mortgage, revert to him in fee simple in the absence of an evident intention to resettle the estate(*b*). But in a case(*c*) where a tenant in tail under a will suffered a recovery to such uses as he should appoint by deed or will and subject thereto to the uses of the will, and afterwards made a mortgage of part of the estate in fee and limited the equity of redemption to the prior uses, and then joined in a transfer of the mortgage and reserved the equity of redemption to himself in fee, it was held that the equity of redemption did not revert to the old uses.

Effect of reservation of right of redemption to different uses.

Again, on a mortgage of a wife's lands to secure her husband's debt, if the equity of redemption is reserved to the husband and his heirs, without any further expression of intention to alter the previous rights, the equity of redemption will result to the wife, but if the mortgage should be for a term of years, and the proviso for redemption should direct that upon pay-

Reservation of equity of redemption of wife's lands.

(*a*) 1 Sug. Pow. 349, 350.

Jackson, 16 Ves. 367.

(*b*) Per Lord Eldon, in *Innes v.*

(*c*) *Anson v. Lee*, 4 Sim. 364.

ment of the money the property should be reconveyed to the husband or to uses other than to the wife, the equity of redemption would belong to the husband, or go according to the uses limited (*d*). In *Martin v. Mitchell* (*e*), the right of redemption was reserved to such uses as the husband and wife should appoint, and in default of appointment to the use of the wife in fee, and the Court doubted whether the wife's estate was altered. But it seems clear that a proviso for redemption in the form last mentioned, would now be deemed sufficient evidence of the wife's intention to enable her, with the concurrence of her husband, to deal with the property without an acknowledged deed (*f*).

Mortgages
under powers.

The same principles apply to mortgages executed under powers where the right of redemption is reserved to uses different from those previously existing (*g*).

Provision for
reducing rate
of interest on
punctual pay-
ment.

It is not unusual, with a view to secure the punctual payment of interest, to provide for its payment in the first instance, at a higher rate than is intended to be taken, with a proviso reducing it to the stipulated rate, in case of punctual payment on the proper half-yearly day, or within a short time (generally one month) thereafter. It would seem the more direct plan to make the interest payable, in the first instance, at the stipulated rate, and to provide for an increased rate in default of punctual payment. But such a provision would not answer the purpose, as it would be regarded in the light of a penalty and relieved against (*h*). It has been held that under the usual proviso reducing the rate of interest on punctual payment, a mortgagee in possession may charge the mortgagor with the higher rate, although he receives the rent before the day fixed for payment of the interest (*i*).

(*d*) *Jackson v. Innes*, 1 Bligh, 104, 136; *Reeve v. Hicks*, 2 Sim. & Stu. 403; *Wood v. Wood*, 7 Beav. 183; *Stansfield v. Hallam*, 29 L. J. (N. S.) Ch. 173; *Lord Hastings v. Astley*, 30 Beav. 269; *Pigott v. Pigott*, L. R. 4 Eq. 549; *Jones v. Davies*, 8 Ch. D. 205; *In re Belton's Trust Estates*, L. R. 12 Eq. 553.

(*e*) 2 Jac. & Walk. 413.

(*f*) *Atkinson v. Smith*, 3 De G. & J. 186.

(*g*) *Whitbread v. Smith*, 3 De G. M. & G. 727; *Heather v. O'Neil*, 2 De G. & J. 399.

(*h*) *Nicholls v. Maynard*, 3 Atk. 519.

(*i*) *Union Bank v. Ingram*, 16 C. D. 53.

Sometimes it is stipulated, particularly where the loan is one of a large amount, that the loan shall remain on the security for a term certain. This is usually effected by making the principal money payable, in the first instance, at the usual time, with provisions, first, that the mortgagee shall not call in the money before the end of the term agreed on, if the interest is punctually paid, and the mortgagor's covenants (if any) are duly performed in the meantime; and, secondly, that the mortgagor shall not be at liberty to pay off the money before the end of the term agreed on, unless the mortgagee shall be willing to receive it.

Provision for continuing loan for a term certain.

It is a well established rule that a mortgagee, whose money is not paid at the appointed day, is entitled to six months' notice previously to his being paid off, or to six months' interest (*k*), unless it be paid in pursuance of a demand made, or proceedings instituted by him (*l*). Where there is a provision to continue the loan for a term certain, it seems doubtful whether the mortgagor would not be entitled to pay it at the end of the period without giving the six months' notice, and it is therefore prudent to provide for this by the deed.

Rule that a mortgagor must give six months' notice before paying off, or pay six months' interest.

It has always been the practice to make the mortgagor enter into absolute covenants for title, and by virtue of the Conveyancing Act, 1881, such covenants are now implied in every conveyance by way of mortgage where the mortgagor conveys as beneficial owner (*m*).

Covenants for title are in a mortgage absolute.

Under the same Act every mortgagee, where the mortgage is by deed, has power (*n*) at any time after the date of the mortgage deed to insure against fire any building, or any effects or property of an insurable nature, whether affixed to the freehold or not, being or forming part of the mortgaged property, and to charge the premiums paid for any such insurance

Power to insure given by Act.

(*k*) See *Day v. Day*, 31 Beav. 970.

(*l*) *Letts v. Hutchins*, L. R. 13 Eq. 176.

(*m*) Sect. 7. The Act is set out at length in the Appendix to this volume.

(*n*) Sect. 19. The Act is set out *verbatim* in the Appendix.

on the mortgaged property, subject to the conditions expressed in section 23.

Having regard to statutory provision, mortgage should contain covenant to insure, and to produce policy and receipts to mortgagee.

Having regard to this statutory provision as to insurance, a mortgage deed comprising buildings should now, as a general rule, contain a covenant by the mortgagor to insure to the amount considered necessary, and to produce the policy and the receipt to the mortgagee on demand, but it is unnecessary to insert any further provision enabling the mortgagee to insure in case of the mortgagor's default. In fact it is better not to do so, as the statutory provision is probably more comprehensive in its operation than any which would be inserted.

The power of sale is referred to in a subsequent part of this Dissertation.

Attornment clause is void under Bills of Sale Act.

It was formerly usual, when the mortgagor was in actual occupation of the mortgaged property, to make him attorn tenant to the mortgagee at a rent at least equal to the interest, so as to enable the latter to distrain for such interest as rent. But it has been lately decided that an attornment clause is void under the Bills of Sale Acts, 1878 and 1882 (*o*), and it should therefore be omitted in future.

Mortgages by proprietor who has registered his title under Land Transfer Act, 1875.

If a proprietor of land has registered his title under the Land Transfer Act, 1875, he can only create a legal mortgage, or, to speak more correctly, a mortgage which will be good against subsequent registered dealings with the land, by following the directions of the Act. The mortgage must be in the form prescribed by the Rules and Orders dated the 24th of December, 1875, with such alterations and additions only as are necessary to meet the circumstances of the case (*p*); and the instrument of charge must be attested by a solicitor, and duly verified, and left with the registrar (*q*), who will thereupon proceed to register it. The legal effect and operation of a registered charge is described in sections 22 to 28 inclusive of the Act.

(*o*) *In re Willis*, 21 Q. B. D. 384, p. 153.

(*p*) Rule 58.
(*q*) Rule 20.

II. *Equitable mortgages by deposit of title deeds.*

An equitable mortgage of lands or other property may be created by a deposit of the title deeds relating to them (*r*), or of a material portion of such deeds (*s*), or of one old deed falsely stated to be the only deed, there being in fact many subsequent ones (*t*), or, in the case of copyholds, by a deposit of copies of the Court rolls, although there may be no accompanying memorandum or agreement expressive of the intention of the parties. And it has been held that a written order given by A. to B., directing C., a prior equitable mortgagee, to deliver to B. the title deeds so soon as his (C.'s) lien was satisfied, gives B. a valid equitable mortgage on the property to which the deeds relate (*u*). It is, of course, assumed that there is no circumstance in the case to rebut the inference that the deposit was made to secure the debt. In *Chapman v. Chapman* (*x*), it was held that the mere fact of a bond creditor producing the title deeds a great many years after the alleged transaction, without explanation or evidence to show any connection between the bond debt and the possession of the title deeds, would not operate as an equitable security.

Equitable mortgage by deposit of deeds.

If upon an advance the deeds are delivered to the lender, or to his solicitor, for the purpose of preparing a mortgage, such delivery will operate as an equitable security for the same (*y*).

Delivery of deeds to prepare a mortgage.

A deposit of title deeds, without any memorandum operates *prima facie* as an equitable security only for the sum due from the mortgagor at the time of the deposit, but parol evidence may be supplied to show that the deposit was made to secure future advances

Effect of security by deposit of deeds.

(*r*) *Russel v. Russel*, 1 B. C. C. 269; *Edge v. Worthington*, 1 Cox, 211; *Ex parte Haigh*, 11 Ves. 403; *Hiorn v. Mills*, 13 Ves. 114; *Ex parte Mountford*, 14 Ves. 606.

(*s*) *Lacon v. Allen*, 3 Drew, 579; *Roberts v. Croft*, 24 Beav. 223.

(*t*) *Dixon v. Muckleston*, L. R. 8 Ch. 155.

(*u*) *Daw v. Terrell*, 33 Beav. 218.

(*x*) 13 Beav. 308.

(*y*) *Edge v. Worthington*, 1 Cox, 211; *Hockby v. Bantock*, 1 Russ. 141; *Keys v. Williams*, 3 Y. & C. 55.

as well as the existing debt, and in that case the deposit will be a good equitable security for the future advances as well (z); and even where a memorandum accompanies the deposit, and such memorandum does not state that the deeds have been lodged with the mortgagee to secure future advances, the security will extend to them if it can be proved by parol evidence that it was intended that the security should operate to that extent (a).

Not prudent to deposit without memorandum.

It is not, however, prudent to deposit title deeds under any circumstances without a memorandum, clearly stating for what sum or to what extent the property comprised in the deeds is to be an equitable security.

Effect of deposit of lease.

An equitable mortgagee, by deposit of a lease, cannot be compelled by the lessor to take a legal assignment, and does not become liable to him in respect of the rent and covenants in the lease, although he may take possession (b).

Deposit of land certificate under Land Transfer Act.

Where land is registered under the "Land Transfer Act, 1875," the deposit of the land certificate in the case of freehold land, and of the office copy of the registered lease, in the case of leasehold land, for the purpose of creating a lien on such land, is equivalent to a deposit of the title deeds (c).

Equitable mortgage by deposit not to be recommended.

It may be observed that the cases are few in which a lender of money would be advised to be content with an equitable mortgage by deposit, when he is able to procure a legal mortgage.

III. *The nature and incidents of the mortgagor's estate, and particularly his right or equity of redemption.*

Effect of non-payment of mortgage

If, as is usually the case, the money is not paid at the time appointed in the proviso for redemption, the

(z) *Ex parte* Whitbread, 19 Ves. 209.

(a) *Ex parte* Kensington, 2 Ves. & Bea. 79.

(b) *Moore v. Gregg*, 2 Phil. 717 (overruling *Lucas v. Comerford*, 8

Sim. 499); *Cox v. Bishop*, 26 L. J. (N. S.) Ch. 389; see also *Moore v. Choat*, 8 Sim. 508; *Williams v. Bosanquet*, 1 Br. & B. 236.

(c) Sect. 81.

estate of the mortgagee becomes absolute at law ; but the Court, in the exercise of its equitable jurisdiction, enables the mortgagor at any time to redeem on payment to the mortgagee of the principal and interest due, together with the costs properly incurred by him in relation to the security ; hence the estate of the mortgagor, after the day has passed without payment, is called an equity of redemption.

money at the appointed time.

A mortgagee is entitled to six months' notice before he can be redeemed, and if at the end of that time the full amount due to him is tendered, he must accept it ; if he refuses, he will be made liable to the costs of the redemption suit thereby made necessary (*d*).

Mortgagee entitled to six months' notice.

If a mortgagee takes proceedings to realise his security, he is bound to accept the principal money and costs with interest up to the time of payment, and cannot claim further interest in lieu of the six months' notice (*e*). Where in an administration suit (not instituted by the mortgagee) an order is made for sale free from the incumbrances of those who consent to the sale, and a mortgagee consents, he is entitled to six months' interest from the date of his consent, and if the sale does not take place within the six months then to further interest up to the time of payment (*f*).

It sometimes happens that when a mortgagor comes to redeem, the mortgagee claims to be paid not only the money secured by the particular mortgage, but also the money secured by some other mortgage—in other words, to consolidate the two. The law as to consolidation applicable to mortgages made before 1st January, 1882, is, that if a person makes two mortgages of different properties to the same person to secure different debts, or if the mortgages are in the first instance made to two different persons, and they subsequently become vested by transfer in the same person, the mortgagor cannot redeem one without the other, assuming that the time has come for

The law as to consolidation of mortgages before 1882.

(*d*) *Smith v. Green*, 1 Col. 555 ; *Eq.* 176 ; *In re Alcock*, 23 Ch. D. 372. *Harmer v. Priestley*, 16 Beav. 569.

(*e*) *Letts v. Hutchins*, L. R. 13 (1) *Day v. Day*, 31 Beav. 270.

redeeming both (*g*). But the rule does not apply if previously to the union of the two mortgages the equity of redemption of one estate has been assigned to a third party. Thus, if a person mortgages Blackacre to A. for £100, and Whiteacre to B. for £50, and then sells and conveys the equity of redemption of Blackacre to C., and then both mortgages are transferred to D., C. is entitled to redeem the mortgage of Blackacre without paying also the money due to D. on the Whiteacre mortgage (*h*).

The rule altered by Conveyancing Act, 1881.

It is provided by the 17th section of the Conveyancing Act, 1881, that a mortgagor seeking to redeem any one mortgage shall by virtue of the Act be entitled to do so, without paying any money due under any separate mortgage made by him or by any person through whom he claims, on property other than that comprised in the mortgage which he seeks to redeem. But this enactment applies only when the mortgages or one of them are or is made after the 31st December, 1881, and so far as a contrary intention is not expressed in them or one of them.

It follows that if a person having mortgaged Blackacre borrows from the same person a further sum on the security of Whiteacre, intending that the latter sum shall be charged on Blackacre also, the second deed should recite or refer to the first and expressly make both properties subject to both debts (*i*).

Mortgagee lending further sum to mortgagor.

If a mortgagee of property lends a further sum to the mortgagor on the security of the same property, one mortgage cannot be redeemed without the other, and this rule applies to mortgages of equitable personalty as well as to mortgages of real estate (*k*).

Simple contract and specialty debts

All simple contract and specialty debts may be tacked to a mortgage debt as against the heir, devisee,

(*g*) *Vint v. Padgett*, 2 De G. & J. 611.

(*h*) *Harter v. Colman*, 10 C. D. 630; disapproving of *Bevor v. Luck*, 4 Eq. 537, in which the contrary was decided. See also *Jennings v. Jordan*, 6 Ap. Ca. 698; *Chesworth v. Hunt*, 5 C. P. D. 266.

(*i*) This is better than inserting in one or both of the deeds a clause in general terms negating the operation of sect. 17 of the Act. See *Precedents*, Nos. LXXV., LXXVI., *infra*, pp. 644, 645.

(*k*) *Watts v. Simes*, 1 D. M. & G. 240.

or executor of a mortgagor, where the equity of redemption is assets (*l*); but so as not to give the mortgagee a preference over other creditors, where the assets are insufficient (*m*). may be tacked to mortgage debt.

A further advance cannot be tacked to a prior legal mortgage upon the strength of a parol agreement to that effect (*n*).

The subject of tacking as between successive incumbrancers is considered in a subsequent part of this Dissertation.

All persons having an estate or interest in the equity of redemption are entitled to redeem. Consequently, the trustee of a bankrupt may redeem, as well as subsequent mortgagees and judgment creditors (*o*). A first mortgagee must accept payment of the mortgage debt from the second mortgagee, and convey to him the mortgaged estate, and also if required transfer to him or to his nominee the mortgage debt (*p*). Persons entitled to redeem.

Sureties for the payment of the mortgage debt may also redeem. It was decided that if a mortgagee advanced a further sum to the mortgagor on a further charge of the property, the surety could not redeem the mortgage without paying the further advance as well as the original sum (*q*), but this decision may be regarded as overruled (*r*). Where distinct sums are advanced at the same time on distinct securities, and a third person becomes security for one of the sums with knowledge of the whole transaction, the mortgagee will, except in cases coming within the 17th sect. of the Conveyancing Act, 1881, be entitled to tack Sureties.

(*l*) *Rolfe v. Chester*, 20 Beav. 610; *Thomas v. Thomas*, 22 Beav. 341.

(*m*) *Talbot v. Frere*, 9 Ch. D. 568.

(*n*) *Ex parte Hooper and Others*, 1 Mer. 7.

(*o*) A judgment creditor had, by virtue of 1 & 2 Vict. c. 110, s. 13, an actual estate or interest in equity in the debtor's land, and although the recent Act, 27 & 28 Vict. c. 112, provides that no judgment shall affect land until execution, the Court will allow a judgment credi-

tor to obtain the appointment of a receiver, and thus remove the legal impediment to his execution. See *supra*, pp. 158, 160, 161.

(*p*) *Smith v. Green*, 1 Col. 555; Conveyancing Act, 1881, s. 15; Conveyancing Act, 1882, s. 12.

(*q*) *Williams v. Owen*, 13 Sim. 597.

(*r*) See *Newton v. Chorlton*, 10 Hare, 662; *Pearl v. Deacon*, 24 Beav. 180; *Forbes v. Jackson*, 19 Ch. D. 615.

both the debts, and to retain the securities for them against the surety until both sums are paid (*t*).

When a mortgagor sells the equity of redemption, and the purchaser borrows a further sum.

If A. mortgages to B. and then sells and conveys the equity of redemption to C., and C. afterwards further charges to B. for an additional advance, A. may be sued by B. on the covenant in the original mortgage deed, but if he pays, he is entitled to have the property conveyed to him without paying the further advance made by B. to C. In other words, he is entitled to what is in effect a transfer of the first mortgage.

Tenant for life.

Where an equity of redemption is settled, the tenant for life has a right to redeem in preference to persons entitled in remainder (*u*), but having redeemed, he cannot compel those in remainder to redeem him. He may make the remaindermen parties to a redemption suit instituted by him against the mortgagor, so that they may be present at the taking of the accounts; he must, however, pay the costs of such remaindermen, and add them to his mortgage, and on his death his representative may bring an action for foreclosure against the remaindermen (*x*).

The personal representative of a deceased mortgagor of real estate is not entitled to redeem in that capacity (*y*).

Forfeiture of equity of redemption if mortgagor makes second mortgage, concealing the first.

By 4 & 5 W. & M. c. 16, it is provided that if any person having once mortgaged, shall again mortgage, and shall not discover to the second mortgagee the former mortgage, he shall have no relief or equity of redemption against such second mortgagee, and the second mortgagee shall hold the land freed from the equity of redemption, and as fully as if his mortgage had been an absolute purchase. It has been decided that the statute, being penal in its character, must be construed strictly, and that neither an equitable mortgagee by deposit of title deeds, nor a mortgagee under a deed in the form of a further charge without a pro-

(*t*) *Fairbrother v. Wodehouse*, 23 Beav. 18.

215.

(*u*) *Ravald v. Russell*, 1 Younge, 19; *Raffety v. King*, 1 Keen. 618; *Wicks v. Scrivens*, 1 John. & Hem.

(*x*) *Riley v. Croydon*, 2 Dr. & Sm. 293.

(*y*) *Cattly v. Simpson*, 34 L. J. Ch. 96.

viso for redemption, is a second mortgagee within the meaning of the Act; and moreover that the Act confers no active remedy which can be enforced in equity (z).

A mortgagor in possession is treated in equity as owner of the mortgaged property for most purposes, and he may exercise all ordinary acts of ownership. Thus, he may cut timber, unless the estate without the timber is a scanty security (a), and he may bring actions at law in his own name for the recovery of rents and profits, or to prevent or recover damages, in respect of any trespass or other wrong relative to the mortgaged property, unless the cause of action arises on a lease or other contract made by him jointly with any other person (b). A mortgagor in possession, where the mortgage is made after the 31st Dec., 1881, is empowered by the Conveyancing Act, 1881, to make agricultural or occupation leases for any term not exceeding 21 years, or building leases for any term not exceeding 99 years, subject to certain conditions which are set out at length in section 18 of the Act.

Power of mortgagor in possession.

Recent Act enables a mortgagor in possession to grant leases.

When a lease is granted under the statutory power, and the rent is reserved to, or covenants are entered into with, the mortgagor as lessor, if the mortgagee afterwards takes possession, or gives notice to pay the rent to him, the right to such rent, and to distrain for the same, or to sue on the covenants, will pass to him (bb).

Rent and benefit of lessee's covenants under lease by mortgagor under power pass to mortgagee if he takes possession.

A mortgagor with a power of leasing may grant a lease to a trustee for himself (c).

Mortgagor with power of leasing.

A mortgagor may cut and remove growing crops until possession has been demanded by the mortgagee, but not after such demand (d).

Mortgagor in possession may cut growing crops.

(z) *Kennard v. Futvoye*, 2 Gif. 81.

ing Society v. Smith, 22 Q. B. D. 70.

(a) *King v. Smith*, 2 Hare, 239.

(c) *Bevan v. Habgood*, 1 J. & H. 222.

(b) 36 & 37 Vict. c. 66, s. 25, sub-s. 5.

(d) *Bagnall v. Viller*, 12 Ch. D. 812.

(bb) *Municipal Investment Build-*

IV. *The remedies of the mortgagee to recover his debt.*

Remedies of
mortgagee.

A mortgagee has several remedies for the recovery of the mortgage money. He may foreclose the equity of redemption, or obtain a judgment for sale through the medium of the Court; he may sell under the power of sale (if any) contained in his mortgage deed, or conferred on him by the recent Act; he may sue at law on the covenant for payment of principal and interest; or he may enter into possession of the property and pay himself out of the rents. The remedies by foreclosure, sale, and action on the covenant, will be considered in this section.

Foreclosure.

A mortgagee of land, whether legal or equitable, may at any time after the day named for payment in the mortgage deed commence an action claiming foreclosure (*d*). The Court will thereupon decree an account to be taken of the amount due, and will name a time at the end of which, if the money is not paid, the mortgagor will be foreclosed. This time will, however, be enlarged in certain cases. After an absolute decree for foreclosure has been made, the mortgagee becomes absolute owner in equity as well as at law, of the mortgaged property.

Sale through
the Court.

By the Conveyancing Act, 1881 (sect. 25), it is provided that in any action, whether for foreclosure, or for redemption, or for sale, or for the raising and payment in any manner of mortgage money, the Court, on the request of the mortgagee, or of any person interested either in the mortgage money or in the right of redemption, and, notwithstanding the dissent of any other person, and notwithstanding that the mortgagee or any person so interested does not appear in the action, and without allowing any time for redemption or for payment of any mortgage money, may, if it thinks fit, direct a sale of the

(*d*) *James v. James*, L. R. 16 Eq. 153. The right of foreclosure does not extend to a pledge of personal

chattels, the remedy in respect to which is sale. *Carter v. Wake*, 4 Ch. D. 605.

mortgage property on such terms as it thinks fit, including, if it thinks fit, the deposit in Court of a reasonable sum fixed by the Court, to meet the expenses of sale and to secure performance of the terms.

The power of ordering a sale conferred on the Court by the above enactment, applies to equitable as well as legal mortgages (*e*), including an equitable mortgage by deposit of title deeds (*f*), and may be exercised at any time before foreclosure (*g*). The Court can order a sale on the application of a subsequent mortgagee without the consent of prior ones, and can give the conduct of the sale to the subsequent mortgagee, but will in such a case fix a reserved price of such an amount as will be sufficient to cover the sum due on the prior mortgages (*h*).

A mortgagee by deed has, by virtue of the Conveyancing Act, 1881, a power, when the mortgage money has become due, to sell the mortgaged property, or any part thereof, subject to the conditions expressed in sections 19 to 22 inclusive (*i*).

Power of sale no longer necessary, such a power being now conferred by statute.

A contract entered into by a mortgagee to sell under a power of sale, is binding on the purchaser, although it may be signed before the expiration of the notice on which the validity of the sale is made to depend (*k*), but of course the contract will not be binding as against the mortgagor if he subsequently complies with the notice.

Contract to sell under power.

The Act provides that a conveyance made in professed exercise of the power is not to be impeachable on the ground of irregularity (*l*). This no doubt

Whether purchaser could safely complete if he is aware that sale is improper.

(*e*) *Wade v. Wilson*, 22 Ch. D. 225.

(*f*) *Oldham v. Stranger*, W. N. 1885, p. 128.

(*g*) *Union Bank of London v. Ingram*, 20 Ch. D. 463; *Davies v. Wright*, 32 Ch. D. 220.

(*h*) *Woolley v. Colman*, 21 Ch. D. 169.

(*i*) The Act is set out *verbatim* in the Appendix.

(*k*) *Kershaw v. Kalow*, 19 Jur. 974.

(*l*) Sect. 21. If a sale is made in

exercise of an express power contained in a mortgage executed before 1 Jan. 1882, and the power is so drawn as to be only exerciseable after default or notice, it must be seen whether the deed contains a clause protecting purchasers from the responsibility of ascertaining whether default has been made, or the required notice has been given. If the deed contains no such clause, it might be very difficult to prove to the satisfaction of the purchaser that the condition on which the

As to sales by mortgagees under express power.

Case of
oppressive
exercise of
power.

exempts a purchaser from the obligation to make any inquiry, but if facts are actually brought to his knowledge showing that the sale is improper, it is apprehended that he could not safely complete. Thus, in a case where a mortgagee sold, after tender of the principal and interest, to a person who bought with knowledge of the tender, the Court set aside the sale, although the mortgage deed provided that "upon a sale purporting to be made under the aforesaid power no purchaser shall be bound to see or inquire as to the propriety or regularity of the sale, and that notwithstanding any impropriety or irregularity the same shall, as regards the purchaser, be deemed to be within the power, and valid accordingly" (m). Upon payment (and tender is equivalent to payment) of the mortgage money, the mortgagee becomes a bare trustee for the mortgagor, and all the provisions of the mortgage deed (including the statutory power of sale) are necessarily at an end, and it is conceived that a purchaser who should buy with knowledge of such a state of circumstances would not be allowed to retain the property.

How power
of sale may
be exercised.

A second mortgagee may purchase from a first mortgagee selling under his power of sale (n); but a mortgagor purchasing under a power of sale in a first mortgage has no title to priority as against his own

power was to be exercised had arisen. (See *Hobson v. Bell*, 2 Beav. 17.) In a case where, prior to a sale, the notice was to be given to the mortgagor or his assigns, and the mortgagor subsequently mortgaged the equity of redemption, the first mortgagee (notwithstanding the purchaser may have obtained a good title in consequence of the proviso in the deed which rendered it unnecessary for him to ascertain whether default was made and the required notice had been given) was held personally responsible for exercising the power without giving notice to the mortgagee of the equity of redemption, of whose mortgage he had notice, as well as to the mortgagor. (*Hook v. Smith*, 17 Ch.

D. 434.) A sale made by a mortgagee in pursuance of a power will not be set aside, though it may afterwards turn out that the security had been satisfied, if the purchaser had no notice of the fact at the time of the sale. (*Dicker v. Angerstein*, 3 Ch. D. 600.) Nor will the Court interfere as against a *bond fide* purchaser under a sale, pursuant to such a power, though the price be very inadequate, unless it is so low as to be evidence of fraud. *Warner v. Jacob*, 20 Ch. D. 220.

(m) *Jenkins v. Jones*, 2 Giff. 99; *Selwyn v. Garfit*, 38 Ch. D. 273.

(n) *Parkinson v. Hanbury*, 1 Dr. & S. 143; *Shaw v. Bunney*, 2 D. J. & S. 468; *Kirkwood v. Thompson*, ib. 613.

second mortgagee(o). Under the usual power of sale, the mortgagee may sell, subject to a stipulation that a part of the purchase-money may remain on mortgage(p).

On the bankruptcy of the mortgagor, the mortgagee, whether his mortgage be legal or equitable, may apply to the Court of Bankruptcy, and obtain an order for a sale under the Bankruptcy Rules, 1883(q). The Court will, upon such application, proceed to inquire whether the applicant is a mortgagee, and if so, will take an account of what is due to him for principal, interest, and costs. A sale will then be directed, and the moneys to come from such sale will be applied, first, in paying the costs, charges, and expenses of the trustee of and occasioned by the application to the Court, and attending the sale; secondly, in payment of the principal, interest, and costs due on the mortgage, and the surplus (if any) will be paid to the trustee. The conduct of the sale is in the discretion of the Court, and will, as a general rule, be given to the trustee, unless the security is insufficient, in which case it will probably be given to the mortgagee(r). If the sale money is insufficient to pay the debt, the mortgagee may prove for the deficiency. But it is not imperative on the mortgagee to apply to the Bankruptcy Court under the above order; he may, if he prefers it, proceed in the Chancery Division of the High Court of Justice for foreclosure, or exercise the power of sale (if any) reserved by the deed or conferred by statute, or pursue any other of his ordinary remedies.

It is settled that a mortgagee cannot be interfered with in the exercise of any of his powers except on the payment of principal, interest, and costs(s); and

Position of mortgagee on mortgagor's bankruptcy.

Mortgagee may pursue all his remedies simultaneously.

(o) *Otter v. Lord Vaux*, 2 K. & J. 650.

(p) *Davey v. Durrant*, 1 De G. & J. 535. See also *Thurlow v. Mackeson*, L. R. 4 Q. B. 97, as to what arrangement amounts to a good exercise of a power of sale.

(q) Rules 65—69.

(r) *In re Jordan*, 13 Q. B. D. 228.

(s) *Paynter v. Carew, Kay*, App. xxxviii., but this does not apply when the mortgagee is the mortgagor's solicitor, and therefore in a fiduciary position towards him. *Quellor v. Jones*, 24 Ch. D. 289.

Opening the
foreclosure.

he may pursue all his remedies at one and the same time, or separately as he may think fit. If pending a foreclosure suit, he sues on the covenant, and obtains full payment, the mortgagor is, by the fact of payment, entitled to a reconveyance, and foreclosure is of course prevented; if a part only of the debt is recovered in the action the mortgagee may foreclose for nonpayment of the remainder. If, on the other hand, he obtains foreclosure first, and finds that the value of the estate is not sufficient to cover his debt, he is not precluded from suing on the covenant, so long as the mortgaged estate remains in his power, but by so doing he gives to the mortgagor a renewed right to redeem, or in other words, opens the foreclosure. If, however, the mortgagee after he has foreclosed sells the mortgaged estate, and thus prevents himself from restoring it, the Court will by injunction restrain him from afterwards suing on the covenant (*t*); but this of course does not apply to a sale by a mortgagee who has not foreclosed under his power of sale (*u*).

Advantage of
power to
appoint a
receiver now
conferred by
statute.

It is sometimes desired on the part of the mortgagee that he should be placed in a position to obtain regular payment of the interest on his money without taking steps to enforce payment of the principal. With this object it is provided by the Conveyancing Act, 1881, that a mortgagee by deed shall have power, when the mortgage money has become due, to appoint a receiver of the income of the mortgaged property, or of any part thereof (*x*).

V. *The powers, duties, and liabilities, of a mortgagee in possession.*

Mortgagee in
possession
must account
to mortgagor,

A mortgagee may, at any time after the day appointed for payment, enter into possession of the mortgaged property, and receive the rents towards

(*t*) Lockhart v. Hardy, 9 Beav. 349; Palmer v. Hendrie, 27 Beav. 349; 28 *ib.* 341.

(*u*) Rudge v. Hutchins, L. R. 8 C. P. 358.

(*x*) Sects. 19, 24.

payment of his debt. He will have to account to the mortgagor for the rents so received, and he will be responsible for gross and wilful negligence or injury, such as pulling down buildings, &c., but he will be allowed for necessary repairs (*y*). He may take possession of part of the mortgaged property, leaving the rest in the possession of the mortgagor (*z*).

A mortgagee in possession could not, until the recent Act, without an express power, grant leases which would be binding in equity on the mortgagor. But the Conveyancing Act, 1881, sect. 18, confers on mortgagees in possession powers to grant agricultural and occupation leases, and building leases, similar to those given to mortgagors in possession, and which are above referred to.

could not
grant binding
leases before
1882,

A mortgagee in possession is bound to deal with the property in the same way as a prudent man would deal with his own; he is not bound to engage in, and will not be allowed for, adventures and speculations (*a*). Thus, he must not open mines (*b*), unless the security is insufficient (*c*), and if he comes into possession of mines already open, he will not be liable for not advancing more in the management of them than a cautious owner would spend, as it is not to be expected that he would risk his own fortune in a speculation and incur hazard in an adventure which, if successful, is ultimately to redound to the benefit of the mortgagor (*d*).

is bound to
deal with pro-
perty as a pru-
dent owner.

A mortgagee in possession, where the mortgage is made after the 31st December, 1881, may cut and sell timber and other trees ripe for cutting, and not planted or left standing for shelter or ornament, and may

May cut and
sell timber
other than
ornamental
timber.

(*y*) *Sandon v. Hooper*, 6 Beav. 246. In order to entitle a mortgagee in possession to permanent improvements or substantial repairs he must make out a case for them at the trial. *Tipton Green Colliery Co. v. Tipton Moat Colliery Co.*, 7 Ch. D. 192.

(*z*) *Simmins v. Shirley*, 6 Ch. D. 173.

(*a*) *Hughes v. Williams*, 12 Ves. 493; *Cocks v. Gray*, 1 Giff. 77.

(*b*) *Thorneycroft v. Crockett*, 16 Sim. 445; *Hood v. Easton*, 2 Giff. 692.

(*c*) *Millett v. Davey*, 31 Beav. 470.

(*d*) *Rowe v. Wood*, 2 J. & W. 555.

contract for any such cutting and sale, to be completed within any time not exceeding twelve months from the making of the contract (e).

How rents to
be applied.

If the net rents received by the mortgagee are more than sufficient to keep down the interest on his debt, the surplus must be applied towards payment of the principal; and a question often arises in what manner the account is to be taken as to such surplus rent, *i. e.*,

Annual rests.

whether annual rests are to be made, and the principal to be sunk each year to the amount of the surplus rents, or whether the interest shall be allowed to run on until the whole debt is discharged. It seems to be now settled that an account with annual rests will not be directed, unless at the time when the mortgagee entered into possession no interest was in arrear, as a mortgagee is not bound to receive his money in driblets. If he enters into possession when no interest is due, he shows his intention to receive payment of the debt in driblets, and therefore the account goes with rests; but if the interest is in arrear, the fact of his taking possession affords no evidence of such an intention, as he is driven to take possession by the non-payment of the interest, and therefore the account goes on till the whole debt is satisfied (f). But a mortgagee of leaseholds may take possession when there is no arrear of interest, under circumstances which may not render him liable to account with annual rests, as if he enters in order to prevent a forfeiture for non-payment of ground rent or non-insurance (g).

When mort-
gagee in
possession
sells part.

But if a mortgagee in possession sells a part of the mortgaged property under a power of sale, he must apply the proceeds first in payment of interest and costs, and then either pay the balance to the mortgagor, or apply it in reduction of principal, and in taking an account against a mortgagee who has retained sale moneys beyond the interest and costs due, a rest must be made at the time of the receipt of

(e) Conveyancing Act, 1881, s. 19.

J. 119.

(f) Nelson v. Booth, 3 De G. &

(g) Patch v. Wild, 30 Beav. 99.

the proceeds of sale, even though he may have entered into possession when interest was in arrear (*h*).

A mortgagee taking possession or selling under his power of sale places himself in a fiduciary position, and if he chooses to receive the rents himself, or to act professionally in the conduct of the sale, he will not be entitled to any commission or profit costs (*i*).

Mortgagee taking possession or selling places himself in fiduciary position.

VI. *The effect of the Statutes of Limitation as between mortgagor and mortgagee.*

According to the Statutes of Limitation now in force (*k*) a mortgagee allowing the mortgagor to remain in possession of the land, is barred of his right to recover that possession by an action of ejectment or to bring an action of foreclosure, and of all other remedies against the land, at the expiration of twelve years after the last payment of any part of the principal money or interest secured by the mortgage, unless in the meantime an acknowledgment of the mortgagee's title is given to him or his agent in writing signed by the mortgagor, in which case time runs from the date of the acknowledgment. If there has been no payment of principal money or interest under the deed, and no acknowledgment, the twelve years will run either from the date of the mortgage or from the day fixed for redemption, probably the latter. If a mortgagee obtains an order for foreclosure within the twelve years, he may bring an action of ejectment to recover the possession of the land at any time within twelve years from the date of the foreclosure order, as such an order vests the beneficial ownership in him for the first time (*l*).

Mortgagee barred of remedy against the land, where mortgagor remains in possession, at end of twelve years after last payment or acknowledgment.

A payment of principal or interest in order to bar the operation of the statute must be by the mortgagor

By whom principal or interest must

(*h*) *Thompson v. Hudson*, L. R. 10 Eq. 497.

(*i*) *Bonithon v. Hockmore*, 1 Vern. 315; *Matthison v. Clarke*, 3 Drew. 3.

(*k*) 3 & 4 Wm. 4, c. 27, ss. 2, 24; 7 Wm. 4 & 1 Vict. c. 28; 37 & 38 Vict. c. 57, s. 1.

(*l*) *Heath v. Pugh*, 6 Q. B. D. 345.

be paid in order to prevent the statute from running.

Action on covenant to recover principal money must be brought within twelve years after right has accrued, or last payment or acknowledgment.

Position of mortgagee and personal representative of mortgagor if mortgage continues after death of latter.

Only six years' arrears of interest can be recovered against land.

Enactment applies whenever legal proceeding by mortgage is necessary.

or by some person bound to make such payment on his behalf, and a payment of rent by a tenant of the mortgaged property to the mortgagee in consequence of a notice from the latter is not such a payment (*m*).

If a mortgage deed contains a covenant to pay the principal money and interest, an action on the covenant must be brought within twelve years next after the right to receive the same has accrued, unless in the meantime some part of the principal money or some interest thereon has been paid, or some acknowledgment of the right thereto has been given in writing, signed by the person by whom the same is payable, or his agent, to the person entitled thereto or his agent, and in such case time will run from the date of the last payment or acknowledgment (*n*).

If after the death of a mortgagor the mortgage continues, and the interest is regularly paid, the mortgagee is not debarred, should the property become depreciated in value, from requiring payment out of the mortgagor's assets under his personal covenant, however long a time may have elapsed since the death (*o*). It follows that the personal representative of a mortgagor cannot safely distribute the assets during the continuance of the mortgage.

It is provided by sect. 42 of the 3 & 4 Wm. 4, c. 27, that no arrears of interest in respect of any sum of money charged on land shall be recovered by any distress, action, or suit, but within six years next after the same shall become due, or next after such acknowledgment as therein mentioned.

It has been held that this section applies to a foreclosure suit or any other legal proceeding taken by the mortgagee against the land or the proceeds of the land, and that where the purchase-money of land in mortgage has been paid into Court under the Lands Clauses Act, or the Trustee Relief Act, so that the

(*m*) *Harlock v. Ashberry*, 19 Ch. D. 539.

(*n*) 37 & 38 Vict. c. 57, s. 8; *Sutton v. Sutton*, 22 Ch. D. 511, and the same rule applies to a

collateral bond; *Fearnside v. Flint*, 22 Ch. D. 579; *Lindsell v. Phillips*, 30 Ch. D. 291.

(*o*) *In re Marsden*, 26 C. D. 783.

mortgagee cannot obtain payment of it without an application to the Court, the section precludes him from receiving more than six years' arrears of interest, whether the application for payment out is made by himself or by the mortgagor (*p*).

But section 42 does not apply where a mortgagee has sold under his power of sale, and has in his hands the proceeds of the sale, so as to preclude him from retaining more than six years' arrears in the event of an action brought against him by the mortgagor for the surplus proceeds (*q*). And it would seem on the same principle that it would not apply to an action by the mortgagor for redemption.

It does not apply to sale by mortgagee under power, and probably not to redemption action by mortgagor.

By sect. 3 of the Act 3 & 4 Will. 4, c. 42, twenty years were fixed as the period within which actions of covenant might be brought, and it was held that this section must be taken as partially repealing, or engrafting an exception on, sect. 42 of c. 27, and that the joint effect of the two Acts was that, as regards money secured by mortgage of land, six years' arrears of interest only could be recovered against the land, but that if the mortgage deed contained, or was accompanied by, a covenant or bond to pay principal and interest, twenty years' arrears might be recovered by an action on the covenant or bond (*r*). It is apprehended that sect. 9 of the recent Act, 37 & 38 Vict. c. 57, providing in effect that (among other sections) sect. 42 of 3 & 4 Will. 4, c. 27, shall remain in force, repeals by implication the exception engrafted on that section by sect. 3 of c. 42, so that the mortgagee's right is now confined to six years' arrears, whether he proceeds against the land by foreclosure or otherwise, or against the mortgagor on the covenant or bond.

Before recent Act twenty years' arrears of interest might be recovered in action on covenant in mortgage deed, but now six years only, *semble*.

(*p*) *Hunter v. Nockolds*, 1 M. & G. 641; *Re Stead's Mortgaged Estates*, 2 Ch. D. 713; *In re Slater's Trusts*, 11 Ch. D. 227. See also *Clarkson v. Henderson*, 14 Ch. D. 348.

(*q*) *Re Marshfield*, 34 O. D. 721, following *Edmunds v. Waugh*, L. R. 1 Eq. 418, and not *Mason v. Broadbent*, 33 Beav. 296.

(*r*) *Hunter v. Nockolds*, 1 M. & G. 641.

Rule as to six years' arrears does not apply, where prior mortgagee has been in possession within a year before action,

but does apply where mortgaged land is reversionary.

Mortgagee not benefited by express trust to secure the money.

Twenty years is the limit where there is a covenant and no mortgage of land.

When mortgagor barred of his equity of redemption.

Section 42 contains a proviso that where a prior mortgagee has been in possession of the land within one year next before an action brought by a subsequent mortgagee, the latter may recover the arrears of interest which have become due during the whole time that the prior mortgagee has been in possession, although it may have exceeded six years. But the fact that the mortgaged property is a reversion or remainder does not prevent the six years from running during the continuance of the prior estate (*t*).

Since the recent Act (*u*) a mortgagee gains no advantage as regards the period within which he must pursue his remedies, by the existence of an express trust for securing the money.

An acknowledgment by a mortgagor, or his personal representative, given to a prior incumbrancer, will not entitle that prior incumbrancer to recover, as against a subsequent incumbrancer, more than six years' arrears of interest (*x*).

A covenant to pay principal money and interest without any mortgage, or such a covenant contained in a mortgage of personal estate only, is within the operation of sect. 3 of 3 & 4 Will. 4, c. 42, so that under such a covenant the right to recover either principal or interest is not barred until the expiration of twenty years.

When a mortgagee has taken possession, the mortgagor's right to redeem will be barred at the end of twelve years from the time of taking possession, unless in the meantime an acknowledgment of the title of the mortgagor, or of his right of redemption, is given to the mortgagor, or some person claiming his estate, or to the agent of such mortgagor or person, in writing, signed by the mortgagee or the person claiming through him, in which case the time will run from the date of the acknowledgment, or the last acknowledgment, if more than one. And the Acts make

(*t*) *Sinclair v. Jackson*, 17 Beav. 405; *Smith v. Hill*, 9 Ch. D. 143.

(*u*) 37 & 38 Vict. c. 57, s. 10.

(*x*) *Bolding v. Lane*, 1 De G. J. & S. 122.

provision for the case of there being more than one mortgagor or mortgagee (*y*), and an acknowledgment being given to or by one only. Twelve years' uninterrupted possession by the mortgagee without intermediate payment or acknowledgment is an absolute bar as against the mortgagor and all persons claiming under him, although he or they may have been under disability (*z*).

Where a mortgagee has been in possession for more than the statutory period without acknowledgment, the right of redemption is extinguished (*a*), and cannot be revived by a subsequent acknowledgment (*b*).

Right of redemption not revived by subsequent acknowledgment.

VII. *The order of liability of the mortgaged property and the general estate of the mortgagor or other person liable to the debt.*

It was formerly the law that if a mortgagor died intestate, or by his will showed no contrary intention, his personal estate was liable to the payment of his mortgage debts in exoneration of the land comprised in the mortgage (*c*). This rule, however, only applied where the mortgage debt was originally the debt of the deceased mortgagor; thus, if A. became entitled by descent or purchase to mortgaged land, and afterwards died intestate, his heir took the land *cum onere*, and was not entitled to have it exonerated out of the personal estate, even though upon a transfer of the mortgage in A.'s lifetime he may have covenanted to pay the money (*d*). *A fortiori*, if a person having only a limited interest in land sub-

Formerly the personalty was the primary security as a general rule.

Exceptions to rule.

(*y*) 3 & 4 Wm. 4, c. 27, s. 28; 37 & 38 Vict. c. 57, s. 7.

(*z*) *Forster v. Patterson*, 17 Ch. D. 132.

(*a*) Sect. 34.

(*b*) *In re Alison*, 11 C. D. 284; *Sanders v. Sanders*, 19 Ch. D. 373. In the latter case, the Court treated *Stansfield v. Hobson*, 3 D. M. & G.

620, which apparently decided the contrary, as of no authority, on the ground that the point seems to have been overlooked.

(*c*) *Howell v. Price*, 1 P. Wms. 291.

(*d*) *Evelyn v. Evelyn*, 2 P. Wms. 664; *Bagot v. Oughton*, 1 P. Wms. 347; *Woods v. Huntingford*, 3 Ves.

ject to a mortgage entered into a bond or covenant for payment of the debt, the bond or covenant was considered as auxiliary only. Again, the rule would not apply where an intention appeared on the face of the mortgage deed, or could be implied from the dealings with the property, that the land should be the primary security. Thus, where a mortgage was made containing the usual covenant by the mortgagor for payment of the mortgage money, and subsequently the mortgagor settled the property subject to the mortgage upon trust for himself for life, with remainders over, leaving in himself the ultimate reversion in fee which he devised by his will, it was held that his general personal estate was exonerated from the mortgage debt, the Court considering that the subsequent dealing with the property showed the intention of the mortgagor to make the land the primary security (*e*). And where property was mortgaged, and was then settled by the mortgagor subject to the mortgage, and with a proviso that the land should be the primary security, and the mortgagor afterwards paid off the debt out of his own money, it was held that the mortgage debt was to be considered as kept on foot for the benefit of his personal estate (*f*).

The law on this subject has been altered by the Act commonly known as Locke King's Act, and by subsequent Acts amending it (*g*).

Construction
of Acts.

The result of these enactments is that as regards a mortgagor of freehold, copyhold, or leasehold property dying after the 31st December, 1877, or a purchaser of any such property dying after that date without having paid the whole of the purchase-money, the property will be the primary fund for payment of the mortgage debt or the unpaid purchase-money, as the case may be, whether such mortgagor or purchaser has died intestate or has disposed of the property by his will, unless in the latter case the will contains an

128, 131; *Scott v. Beecher*, 5 Mad. 96; see also *Bond v. England*, 2 K. & J. 44, where the subject is fully discussed.

(*e*) *Lady Langdale v. Briggs*, 8

De G. M. & G. 391.

(*f*) *Pears v. Wrightman*, 2 Jur. (N. S.) 586.

(*g*) 17 & 18 Vict. c. 113; 30 & 31 Vict. c. 69; 40 & 41 Vict. c. 34.

expression of a contrary intention, and such contrary intention will not be deemed to be signified by a charge of or direction for payment of debts upon or out of residuary real and personal estate, or residuary real estate (*h*). If freeholds or copyholds and leaseholds are together made the subject of mortgage or contract, the burden must be borne by the respective estates according to their value.

When real estate and also property to which the Acts do not apply are the subjects of the same mortgage, in the administration of the mortgagor's estate, the real estate would have to bear such proportion of the mortgage debt as the value of such real estate bears to the value of the whole of the mortgage property (*i*). So also when two estates are subject to the same mortgage, and one of them is specifically devised and the other passes under a residuary devise, the two estates must rateably bear the mortgage debt (*k*).

Effect when real estate and property to which Acts do not apply are subjects of same mortgage.

Upon a mortgage by a husband and wife of the wife's land, where the money is received by the husband, the husband and his estate are primarily liable (*l*). If the deed expresses that the money is paid to the husband and wife, that is *primâ facie* a payment to the husband; but it may be shown by extrinsic evidence that the payment was in fact for the benefit of the wife, and in that case the land will be primarily liable (*m*).

Primary liability of husband on mortgage of wife's land.

VIII. *Mortgages under powers, including mortgages by executors.*

When mortgages are made in pursuance of powers, it is important to consider what provisions may be introduced into the deed, consistently with the terms of

Preparation of mortgages under powers.

(*h*) As to what would amount to a contrary intention, see *Colston v. Roberts*, 37 C. D. 677.

(*i*) *Trestrail v. Newson*, W. N. 1878, p. 13.

(*k*) *Gibbins v. Eyden*, L. R. 6 Eq. 371; see also *Leonino v. Leonino*, 10 Ch. D. 460.

(*l*) *Tate v. Austen*, 1 P. Wms. 264; *Pocock v. Lee*, 1 Vern. 604; see *Scholefield v. Lockwood*, 33 L. J. Ch. 106.

(*m*) *Hudson v. Carmichael*, Kay, 613; *Clinton v. Hooper*, 1 Ves. jun. 173; *Earl of Kinnoul v. Money*, 3 Swanst. 202, 211, note.

the power. In *Clarke v. The Royal Panopticon* (n), *Kindersley*, V.-C., held that under a power to mortgage without more, the donee of the power could not give the mortgagee a power of sale in case of default. But this case may be considered to be overruled by more recent authorities which decide that a power of sale is an ordinary incident to a mortgage, and that a power to mortgage includes a power to give a mortgagee all such remedies as are proper to be given to him, and that one of these remedies is a power of sale (o); and by the recent Act a power of sale is made incident to every mortgage, including (it is apprehended) one made under a power. It is desirable to provide in the instrument creating the power to mortgage that the money advanced is required for the purpose for which it is expressed to be borrowed.

Executor may sell or mortgage personalty.

An executor or administrator has an absolute power of disposal over the personal property of the testator or intestate, including his chattel interests in land. He may, therefore, either sell or mortgage the same (p), and the mortgagee need not inquire of the executor or administrator as to debts or legacies, but he should, if possible, obtain the concurrence of the legatee where the property is specifically bequeathed, lest the executor or administrator should have made a previous assent to the legacy.

Executor may mortgage and give power of sale to mortgagee.

An executor or administrator may not only mortgage the assets, but may give to the mortgagee a power of sale (q); and where a mortgage is made of an infant's real estate under an order of the Court, a power of sale may be inserted, because better terms can be thus obtained in raising the money (r).

(n) 4 Drew, 26.

(o) *Bridges v. Longman*, 24 Beav. 27; *Cook v. Dawson*, 29 Beav. 123, 128; *In re Chawner's Will*, L. R. 8 Eq. 569.

(p) See 2 Wms. on Executors, p. 873; see *Earl Vane v. Rigden*,

L. R. 5 C. A. 663.

(q) *Russell v. Plaice*, 18 Beav. 21; *Cruikshank v. Duffin*, L. R. 13 Eq. 555.

(r) *Selby v. Cooling*, 26 Beav. 418.

IX. *The rights and priorities of several mortgagees and incumbrancers amongst themselves; the protection afforded to purchasers and mortgagees against concealed trusts and incumbrances by the possession of the legal estate; the doctrine of tacking; notice, actual and constructive, and the consequence of laches on the part of a mortgagee, particularly in reference to the title deeds.*

It sometimes happens that the same property is made the subject of several mortgages, the fact of the prior incumbrances being concealed from each subsequent mortgagee, or that a sale or mortgage is made by a person who is a trustee without power to sell or mortgage, or who is affected by notice of prior trusts or incumbrances, or whose title is otherwise defective in equity, to a person who has no knowledge of such circumstances. In these cases questions of priority arise, in the former, as between the successive mortgagees, and in the latter, as between the purchaser or mortgagee on the one hand, and the persons whose rights are prejudiced by the sale or mortgage on the other hand.

Cases in which questions of priority arise.

In determining such questions, two rules must be borne in mind. The one is, that where the equities are equal, the person who has the legal estate will prevail (*s*); and the second is, that as between persons having only equitable interests, if these equities are in other respects equal, priority of time gives the better equity, for *qui prior est tempore potior est jure* (*t*).

Rules applicable to such questions.

It has long been settled that if a person being a trustee on an express trust, or being affected by notice of a trust or incumbrance, conveys the legal estate to a purchaser or mortgagee for valuable consideration who has no notice, the latter is protected from such trust or incumbrance by the possession of the legal estate, and acquires an indefeasible title both at law and in equity, so that he may himself afterwards effectually

Purchaser without notice may protect himself against trusts, &c., by legal estate.

(*s*) Francis' *Maxims*, Max. 1; 2
Fonblanque on Equity, 302.

(*t*) *Rice v. Rice*, 2 Drew. 73.

Even in case
of fraud.

sell or mortgage even to persons who have notice (*u*). And the protection of the legal estate extends to cases where the vendor or those from whom he claims is or are guilty of gross fraud. Thus in *Jones v. Powles* (*x*), Jones mortgaged to Holbrook, and afterwards paid off the mortgage, but took no reconveyance, so that Holbrook became a trustee for Jones;—Jones afterwards died, and Meredith produced a document purporting to be the will of Jones, devising all his property to Meredith, but which document was in fact forged by him. Meredith borrowed money from Hall, and Holbrook, by the direction of Meredith, conveyed the legal estate by way of mortgage to Hall to secure the advance, and this mortgage, by virtue of several *mesne* conveyances, became ultimately vested in Powles, who took possession. Upon a bill afterwards filed by the heiress at law of Jones, it was held that Powles had a good security by virtue of the possession of the legal estate for the money due to her.

Doctrine
stated by
Gilbert.

In Gilbert's "*Lex Prætoria*" (*y*), the equitable right of a purchaser for valuable consideration is stated thus: "If B. obtains a conveyance of land from A. by fraud, and A. quits the possession to B., and B. sells the land to C. for valuable consideration *bonâ fide* and without notice, A. can never obtain the land against C., because the fraudulent conveyance with the quitting the possession transfers an interest, and that when C. has obtained an interest at law for his money *bonâ fide*, a court of equity ought not to take it from him."

Some cases to
which rule
applies.

It follows from what has been stated that if B. takes a conveyance or mortgage of the legal estate from A. under circumstances which would make the transaction impeachable in equity as against B., either by A.

(*u*) *Ferrers v. Cherry*, 2 Vern. 383; *Mertins v. Jolliffe*, Amb. 313; *Sweet v. Southcote*, 2 B. C. C. 66; *Macqueen v. Farquhar*, 11 Ves. 478.

(*x*) 3 M. & K. 581; see also New-

ton v. Newton, L. R. 4 C. A. 143; *Young v. Young*, L. R. 3 Eq. 1; *Pilcher v. Rawlins*, L. R. 7 C. A. 250. This last case overrules *Carter v. Carter*, 3 K. & J. 617.

(*y*) *Frauds*, p. 287.

himself, or by some person for whom A. is a trustee, and B. subsequently conveys the legal estate to C. as a purchaser for valuable consideration, and without notice, either actual or constructive, of such circumstances, C.'s title cannot be impeached. Thus if A., being a mortgagee with a power of sale, sells to B. under circumstances which would enable A.'s mortgagor to set aside the sale as against B., and B. subsequently sells or mortgages to C., who has no notice of such circumstances, C. is protected by the possession of the legal estate. Again, if a purchase by B. from A. is liable to be set aside as between those parties on the ground that B. was A.'s solicitor, and B. previously to any suit instituted for that purpose sells and conveys the legal estate to C. who has no notice, either actual or constructive, of the relation of solicitor and client existing between A. and B., it is conceived that C. in this case also has an indefeasible title (*z*).

The protection of the legal estate is not confined to cases where a purchaser or mortgagee acquires such legal estate at the time of his purchase or mortgage, or before he has notice of the prior trust or incumbrance (*a*). Thus a third mortgagee advancing his money without notice of a second mortgage, may, by paying off a first mortgagee who has the legal estate, and taking a transfer from him of such first mortgage, hold the property as against the second mortgagee until not only the first mortgagee, but also the third is paid off; in other words, may tack (*b*) the two debts together, and thus, as it were, squeeze out the second (*c*). Tacking.

But a purchaser or mortgagee, who, after completing his purchase or mortgage, becomes aware that the legal Purchaser taking legal estate from

(*z*) See, accordingly, *Bainbridge v. Browne*, W. N. 1881, p. 92.

(*a*) *Stanhope v. Earl Verney*, 2 Eden, 85; see also *Willoughby v. Willoughby*, 1 T. R. 763; *Butler's note to Co. Lit.* 390 b.

(*b*) The doctrine of tacking and protection by the legal estate, as explained in this Dissertation, will not apply in future to lands in

Yorkshire. (See 47 & 48 Vict. c. 54, s. 16; and *supra*, p. 153.)

(*c*) *March v. Lee*, 1 Ch. Ca. 162; 2 Vent. 337; *Churchill v. Grove*, 1 Ch. Ca. 36; *Edmunds v. Povey*, 1 Vern. 187; *Bovey v. Skipwith*, 1 Ch. Ca. 201; *Peacock v. Burt*, 4 L. J. (N. S.) Ch. 33; *Spencer v. Pearson*, 24 Beav. 266; *Bates v. Johnson*, 1 John. 304.

express trustee
with notice,
not protected.

estate is vested in a trustee upon express trusts, cannot protect himself against such trusts by taking a conveyance of the legal estate from the trustee; for by taking a conveyance with notice of the trusts, he himself becomes the trustee, and must not, to get a plank to save himself, be guilty of a breach of trust (*d*).

Third mort-
gages taking
a conveyance
from first
mortgagee
who has been
previously paid
off, not
protected.

It follows that if a first mortgagee, after his mortgage has been satisfied, conveys the legal estate to a third mortgagee, and at the time of such conveyance the third mortgagee has notice of a second mortgage, the third mortgagee, though he had no notice of the second mortgage when he advanced his money, does not by such transaction obtain priority, the distinction being this: it is no breach of duty in a first mortgagee who is unsatisfied to transfer his mortgage to any person who pays him off, and he may therefore transfer it to the third mortgagee; but if the first mortgagee has been satisfied, he thereby becomes a trustee for the second, and it is a breach of duty in him to convey the legal estate to the third, who, being aware of such breach of duty, will not be allowed to profit thereby (*e*).

Conveyance
being a breach
of trust, no
protection,
even though
grantee has no
notice of the
trust, *semble*.

And in some recent cases, the opinion of the Court seems to have been, that a purchaser or mortgagee who at the time of completion acquires a defective title, cannot avail himself of a subsequent conveyance of the legal estate from a person who being a trustee for another commits a breach of trust in so conveying, even if the person taking the conveyance has no notice of the trust (*f*).

How far pro-
tection of legal
estate applies
to transferee
of a mort-
gage.

In the application of the doctrine as to the protection afforded by the legal estate to the transferee of a mortgage, it must be borne in mind that a mortgage

(*d*) *Saunders v. Dehew*, 2 Vern. 271; *Allen v. Knight*, 5 Hare, 272; see also *Willoughby v. Willoughby*, 1 T. R. 763; *Maundrell v. Maundrell*, 10 Ves. 246; *Ex parte Knott*, 11 Ves. 609; *Mumford v. Stohwasser*, L. R. 18 Eq. 556; *Harpham v. Shacklock*, 19 Ch. D. 207; *Lad-*

brook v. Passman, W. N. 1888, p. 156.

(*e*) See *Bates v. Johnson*, 1 John. 301; *West London Commercial and Reliance Permanent Building Soc.*, 29 Ch. D. 954.

(*f*) *Mayfield v. Burton*, L. R. 17 Eq. 15; *Mumford v. Stohwasser*, *ib.* 18 Eq. 567.

is regarded in equity as a mere security for a debt, and consequently that the interests of persons claiming under a mortgage in the land comprised therein are regulated by their interests in the debt for which the land is a security. If, then, B., by fraud, induces A. to execute to him a mortgage, no money passing from B. to A., and no debt being in fact contracted, and if B., without the concurrence of A., subsequently transfers such mortgage to C. for valuable consideration, it is conceived that C. is in no better position than B., for as no debt was due to B., no debt passes to C.; and as the land was not the subject of the transaction, but the debt for which the land was only a security, C. cannot retain the land as against A. where there is no debt (g). Again, if A. mortgages land to B., who knows that A. is a trustee without a power to mortgage, or having such power is improperly exercising it, no debt is created as against the land and the beneficial owners of it. If, then, B. afterwards transfers such mortgage to C. without the concurrence of A., C., though without notice of the trust, can only stand in the shoes of B., and will not be allowed to retain the land against the *cestuis que trust* of A. Thus, in *Burt v. Trueman* (h), Pemberton, the trustee of a will with a power to raise money by mortgage for payment of debts, deposited the title deeds relating to lands of the testator with Holloway, under circumstances which, in the opinion of the Court, constituted notice to him that the money was raised for Pemberton's private purposes. Afterwards Holloway transferred his equitable security to Trueman, who subsequently applied to Pemberton for, and obtained a legal mortgage in pursuance of the original agreement. Trueman had no notice, either when he advanced his money or took the legal mortgage, of the improper application of the original advance, and nevertheless the mortgage in his hands was held to be invalid as against the *cestuis que trust* under the will.

Transferee of a mortgage can be in no better position than transferor.

Burt v. Trueman.

(g) See *Parker v. Clarke*, 30 Beav. 54; *Rolt v. White*, 31 Beav. 520.

(h) 6 Jur. (N. S.) 72. See also *Parker v. Clarke*, 30 Beav. 54; *Adsett v. Hives*, 33 Beav. 52.

The Vice-Chancellor observed that the equitable security was certainly bad in the hands of Holloway against the *cestuis que trust*. "Suppose, then," he said, "that a bill had been filed by the present plaintiff against Trueman, could he have maintained that mortgage, he standing simply in the shoes of Holloway? Trueman could not have maintained it more than Holloway, and if the security was one that he could not maintain at first, the taking the legal estate merely in consequence of a prior contract did not enable him to do so. It is not necessary to consider what would be the position of Trueman if he had been asked to advance money for the first time to Pemberton, on the representation that Pemberton wanted the money to pay debts." It will be observed that in this case no debt was created by the transaction with Holloway as against the land and its beneficial owners; no debt, therefore, passed by the transfer to Trueman, and the subsequent getting in of the legal estate was merely an acquisition of a further security in pursuance of the original contract for a debt which did not in fact exist.

Distinction where mortgagor joins in transfer, or mortgagee sells under power of sale.

But where the mortgagor joins in the transfer of a mortgage, it is conceived that the transaction is to be treated as a new one, and that the transferee is not affected by any equitable right binding the original mortgagee, of which he (the transferee) has not himself notice. Again, if B., a mortgagee with notice of a prior trust or incumbrance, sells under a power of sale in the mortgage deed to C., who has no notice, it is conceived that as the land which is the subject of the transaction passes to C. by the deed, C. can hold the land free from any right of redemption on the part of the prior *cestui que trust* or incumbrancer.

Where neither party has legal estate, priorities of incumbrances are according to their dates.

It will be borne in mind that the possession of the legal estate is essential to give to a purchaser or mortgagee priority over trusts or incumbrances of which he has no notice; so that where the interests of all of several incumbrancers are equitable only, either by reason of the legal estate being outstanding, or from the property being of an equitable nature, then if the

equities of all parties are in other respects equal, *i.e.*, if there are no special circumstances entitling one of the parties in preference to another to the assistance of the Court, the incumbrances will rank according to their order of date (*i*). In such a case the rule *qui prior est tempore potior est jure* applies. Thus, if a mortgagee of an equitable estate, who is in fact a trustee, though not so expressed in the mortgage deed, fraudulently transfers the mortgage to another for valuable consideration, the transferee will take, subject to the claims of the *cestuis que trust*, assuming that the latter have not been guilty of negligence (*k*). And there can be no tacking where all the incumbrances are equitable, so that a third mortgagee gains no advantage by taking a transfer of the first mortgage, where the legal estate is outstanding.

But if the party whose right is prior in time has, by his own negligence, conduced to the fraud committed on the other, he will be postponed, as in such case his equity is inferior. Thus, when A. was induced by his solicitor to execute a deed, which was, in fact, a conveyance to the solicitor as on a sale, and to sign the receipt for the purchase-money indorsed on the deed, trusting to his statement that the deed was a mere form, and afterwards the solicitor deposited the title deeds with B. by way of equitable mortgage to secure a debt, B. was held to have priority over A. (*l*). It was argued that the deed, having been executed by A. under a misapprehension as to its contents, was a nullity, and some decisions of V.-C. Stuart were cited in support of this view (*m*); but the Court considered that a man who signs a deed negligently cannot treat it as void as against a third person, who innocently, and without any negligence on his part, acts on the deed so signed, and that a man who chooses to trust implicitly to his agent ought to suffer, rather than the stranger who deals with the agent.

But if one party has by negligence conduced to a fraud, he will be postponed.

(*i*) *Brace v. Duchess of Marlborough*, 2 P. W. 493, 7th Resolution.

(*k*) *Cory v. Eyre*, 1 De G. & J. 149.

(*l*) *Hunter v. Walters*, L. R. 7 Ch. 75.

(*m*) *Vorley v. Cooke*, 1 Giff. 230; *Ogilvie v. Jeaffreson*, 2 Giff. 353; *Lee v. Angus*, Nov. 20, 1866.

First mortgagee may not tack for further advances after notice of a second mortgage.

Before leaving the subject of tacking it may be stated that if a mortgage is made to secure a specific sum and future advances, and such mortgage is followed by a second incumbrance, the first mortgagee would not be entitled to priority in respect of further advances made by him after notice of the second mortgage, although the second mortgage was made with notice of the prior mortgage (*n*).

Notice, actual and constructive.

Notice may be either actual or constructive. As to *actual* notice nothing need be said; but a purchaser or mortgagee is often chargeable with the consequences of notice from the existence of circumstances which render it his duty to make inquiries, in which case he is deemed to have knowledge of the facts to which those inquiries ought to lead him. Thus notice that the title deeds are in the hands of a third party is notice of his charge on the property. When a purchaser is referred for information to another, it is his duty to make the proper inquiries of such person, and he would be held responsible for the information he might have gained by making the inquiries (*o*). Notice of a particular instrument is notice of all instruments and facts which may be disclosed by that deed (*p*). So also notice of a lease is notice of the covenants and provisions contained in the lease, if they are usual ones (*q*); and a purchaser or lessee is not protected from the consequences of not inspecting it, notwithstanding the express representation on the part of the vendor or lessor that the lease contains no restrictive covenants (*r*). Notice of the property being in the occupation of a particular person is notice of the interest of that person, and inquiry must be made as to the tenancy and the

(*n*) *Shaw v. Neale*, 19 Jur. 666; *Hopkinson v. Rolt*, 9 H. L. Cas. 514; *Bradford Banking Co. v. Briggs*, 29 Ch. D. 149.

(*o*) *Wason v. Wareing*, 15 Beav. 151.

(*p*) *Coppin v. Fernyhough*, 2 Br. C. C. 291; *Eland v. Eland*, 1 Beav. 235; *Davies v. Thomas*, 2 Y. & C.

234; 16 Beav. 388.

(*q*) *Hall v. Smith*, 14 Ves. 433. But notice of a lease is not notice of unusual covenants, unless an opportunity has been given of inspecting it before the sale. *Reeve v. Berridge*, 20 Q. B. D. 523.

(*r*) *Patman v. Harland*, 17 Ch. D. 353.

agreement under which he holds (*s*). In fact, whatever should put the purchaser or mortgagee on inquiry is notice, and he would also be held to have constructive notice in any case in which he has designedly abstained from making inquiries for the purpose of avoiding notice (*t*).

It is the duty (*u*) of a purchaser or mortgagee to require the vendor or mortgagor to deduce and show a reasonable title, and if he neglects to do so he will be affected with constructive notice of the contents of any deed forming part of the chain of title. It has been held that this rule has not been altered as regards leaseholds by the Vendor and Purchaser Act, 1874, but that a purchaser of leaseholds is in the same position with regard to notice as he would have been in if before the Act he had agreed not to inquire into the lessor's title (*x*).

Purchaser should require vendor or lessor to deduce a reasonable title.

But as regards property situate in a register county, a purchaser who has searched the registry is not bound to inquire whether there are any unregistered deeds (*y*).

Search in register county.

Notice of a charge is notice of everything auxiliary to it, but if the same deed contains two charges of two distinct properties, a notice given of one charge is not notice of the other (*z*).

Notice of charge.

As a general rule, a person is deemed to have notice of all facts which come to the knowledge of his solicitor in the course of the same transaction (*a*); but as the

Notice to solicitor notice to client.

(*s*) *Allen v. Anthony*, 1 Mer. 282; *Meux v. Maltby*, 2 Swanst. 281; *James v. Lichfield*, L. R. 9 Eq. 51; *Cavender v. Bulteel*, *ib.* 9 Ch. 79; *Phillips v. Miller*, *ib.* 9 C. P. 196.

(*t*) *Jones v. Smith*, 1 Hare, 55.

(*u*) The term "duty," as here used, "does not mean that a purchaser or mortgagee owes any duty to the possible holder of an adverse interest. It merely means the course which a man dealing *bond fide* in the proper and usual manner for his own interest ought to follow, with a view to his own title and his own security. If he does not follow that course, the omission of it, in the absence of explanation, is evidence

of a design, inconsistent with *bond fide* dealing, to avoid knowledge of the true state of the title." (Per Lord Selborne, in *Agra Bank v. Barry*, L. R. 7 H. L. 157.)

(*x*) *Patman v. Harland*, 17 C. D. 353. It seems a strange doctrine that a purchaser is to be deemed guilty of negligence for not negating the operation of an Act of Parliament.

(*y*) *Agra Bank v. Barry*, L. R. 7 H. L. 135.

(*z*) *Re Bright's Trusts*, 21 Beav. 430.

(*a*) *Lowther v. Carlton*, 2 Atk. 242; *Worsley v. Earl of Scarborough*, 3 Atk. 392; *Hiern v. Mill*, 13 Ves. 120.

doctrine is founded on the presumption that a solicitor communicates such facts to his clients, it does not apply where the fact with notice of which the client is sought to be charged is one which the solicitor would certainly conceal, as, *e.g.*, a fraudulent act of his own (*b*). When the mortgagor is himself a solicitor and prepares the mortgage deed, the mortgagee employing no other solicitor, the mortgagor will be considered the agent of the mortgagee in the transaction (*c*).

What notice
purchaser is
and is not to
be affected by.

Section 3 of the Conveyancing Act, 1882 (which is made to apply to purchases made either before or after the commencement of the Act), provides that a purchaser shall not be prejudicially affected by notice of any instrument, fact, or thing, unless (1) it is within his own knowledge, or would have come to his knowledge, if such inquiries and inspections had been made as ought reasonably to have been made by him, or (2), in the same transaction with respect to which a question of notice to the purchaser arises it has come to the knowledge of his counsel as such, or of his solicitor or other agent as such, or would have come to the knowledge of his solicitor or other agent as such if such inquiries and inspections had been made as ought reasonably to have been made by the solicitor or other agent.

This section does little more than express the existing equitable doctrine of notice, and would not, it is apprehended, protect a purchaser when he has entered into a contract under which he is expressly or (assuming *Patman v. Harland* to be good law) by statute precluded from calling for the title previous to a particular date.

Priority, how
affected by
non-possession
of deeds.

Cases have frequently arisen in which it is sought to postpone a legal mortgagee not holding the title deeds to a prior or subsequent equitable mortgagee holding them, on the ground of negligence on the part

(*b*) *Kennedy v. Green*, 3 M. & K. 699. But see the observations of Chelmsford, L. C., in *Espin v. Pemberton*, 3 De G. & J. 554, as to the notice supposed to be received by a client through his solicitor; and

also see *Bolland v. Hart*, 6 Ch. Ap. 678.

(*c*) *Hewitt v. Loosemore*, 9 Hare, 449; *Espin v. Pemberton*, 4 Drew. 333.

of the former. It is settled that non-possession of the deeds will not deprive the legal mortgagee of his priority, unless it appears that he has omitted to obtain them, or has parted with the possession of them under circumstances from which the Court will infer fraud or negligence so gross as to be evidence of connivance in fraud (*d*). If, for instance, the legal mortgagee has completed without making any inquiry about the deeds, or has given them up to the mortgagor without asking for what purpose they are required, such conduct, if unexplained, will be considered as gross negligence tantamount to fraud, and he will be postponed (*e*). But if he has inquired for the deeds, and his omission to get them, or his subsequent giving them up to the mortgagor, has arisen from misrepresentation on the part of the latter, by which he has been deceived, or is otherwise explainable, *e.g.*, if he has been told that the deeds are temporarily mislaid, and will be delivered to him when found (*f*); or if a packet has been given to him, represented as containing all the deeds, whereas in fact it contains some only, and relying on the representation he has not examined the packet (*g*); or if he has asked for certain deeds and has been told that they do not affect the property (*h*); or if he has been asked to lend a deed to the mortgagor for some innocent purpose, and has not left it with him longer than is consistent with that purpose (*i*),—in all these cases fraud or gross negligence will not be imputed, and the priority will not be lost.

Not lost, unless there is fraud or gross negligence tantamount to fraud.

Gross negligence will be imputed where there is no inquiry for deeds.

Secus, if any reasonable excuse is given.

Instances where priority not lost.

If a mortgagee gives up the deeds to the mortgagor for the purpose of enabling him to raise money on

Mortgagee authorizing mortgagor to

(*d*) *Hewitt v. Loosemore*, 9 Hare, 449; *Northern Counties, &c. Co. v. Whipp*, 26 Ch. D. 493; *Lloyds' Banking Co. v. Jones*, 29 Ch. D. 221; *Manners v. Mew*, 29 Ch. D. 721; *Bickerton v. Walker*, 31 Ch. D. 151; *Farrand v. York Banking Co.*, W. N. 1888, p. 213.

(*e*) *Worthington v. Morgan*, 16 Sim. 547; *Clarke v. Palmer*, 21 Ch. D. 124.

(*f*) *Hewitt v. Loosemore*, *ubi*

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suprà; *Espin v. Pemberton*, 4 Drew. 33.

(*g*) *Colyer v. Finch*, 5 H. of L. Cases, 905; *Hunt v. Elmes*, 28 Beav. 631; *Roberts v. Croft*, 2 De G. & J. 1; *Ratcliffe v. Burnard*, L. R. 8 Ch. 652; *Dixon v. Muckleston*, L. R. 8 Ch. 155.

(*h*) *Jones v. Smith*, 1 Ph. 240.

(*i*) *Martinez v. Cooper*, 2 Russ. 198; *Waldron v. Sloper*, 1 Drew. 193.

raise money by means of deeds will be postponed, though authority is exceeded.

them, but makes certain conditions, *e.g.*, that a limited sum only shall be raised, or that the second mortgagee shall be informed of the prior security, and the mortgagor transgresses the conditions by borrowing a larger sum than was agreed on (*k*), or by concealing the first mortgage (*l*), the first mortgagee will be postponed to the second one, not on the ground of fraud, but because having authorized the mortgagor to raise money by means of the deeds, he cannot as against a person who makes an advance on the faith of the possession of the deeds, insist that the authority has been exceeded.

Mere carelessness will not deprive legal mortgagee of priority.

Mere carelessness or want of prudence from which fraud, or connivance in fraud, cannot be inferred, is not sufficient ground for postponing a legal mortgagee. Thus in a case where the manager of a company mortgaged his own property to the company, and afterwards abstracted the title deeds from the company's safe by means of a key, which was entrusted to him as manager, and then executed a mortgage to another person, and delivered to him the deeds, it was held that the company had not lost their priority (*m*).

Indorsement of receipt before payment.

Where a vendor conveyed without receiving his purchase-money, but the receipt of it was indorsed on the deed, and the title deeds were delivered to the purchaser, who afterwards deposited the deeds by way of equitable mortgage, and the mortgagee had no notice of the purchase-money being unpaid, it was held, as between the vendor's lien and the equitable mortgage, that the possession of the title deeds, and the fact of the indorsement of the receipt on the deed, gave the mortgagee the better equity (*n*).

Consequence of not giving notice on assignment of choses in action, &c.

Where the subject of an assignment is a chose in action or personalty vested in a trustee, it is the duty of the assignee to give notice to the debtor or to the trustee, as the case may be, and if he neglects to do

(*k*) *Perry Herrick v. Attwood*, 2 De G. & J. 21.

(*l*) *Briggs v. Jones*, L. R. 10 Eq. 92.

(*m*) *Northern, &c. Co. v. Whipp*, 26 Ch. D. 482; see also *National*

Provincial Bank of England v. Jackson, 33 Ch. D. 1.

(*n*) *Rice v. Rice*, 2 Drew. 73; *Newton v. Newton*, L. R. 4 C. A. 143.

so, he will be postponed to a subsequent assignee for value who takes this precaution.

As regards a legal chose in action, it is provided by the Judicature Act, 1873 (*o*), that any absolute assignment by writing, under the hand of the assignor (not purporting to be by way of charge only), of any debt or other legal chose in action, of which express notice in writing shall have been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be, and be deemed to have been, effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this Act had not passed) to pass and transfer the legal right to such debt or chose in action, from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor. There is a proviso that if the debtor, trustee, or other person liable in respect of such debt or chose in action, shall have had notice that such assignment is disputed by the assignor or any one claiming under him, or of any other opposing or conflicting claims to such debt or chose in action, he shall be entitled, if he think fit, to call upon the several persons making claim thereto to interplead, or he may pay the same into Court, under the Trustee Relief Acts.

Legal choses in action may now be absolutely assigned at law.

It will be observed that the above enactment does not apply to an assignment by way of charge, and it has been held that an assignment subject to a proviso for redemption is a charge within the meaning of this exception (*p*); but that an assignment to a creditor in trust to pay himself and hand over the surplus to the assignor is not (*q*). The distinction cannot be relied on.

But an assignment by way of charge is excepted.

As the interest of a *cestui que trust* is not a legal chose in action, it is difficult to see how the above

(*o*) 36 & 37 Vict. c. 66, s. 25, Q. B. D. 626.
sub-s. 6.

(*q*) *Burlington v. Hall*, 12 Q. B. D. 347.

(*p*) *Nat. Prov. Bank v. Harle*, 6

enactment can apply to a trustee, and why the word "trustee" is used.

The subject of notice on assignments of choses in action and equitable interests is further discussed in the next section.

X. Some precautions to be observed by a person advancing money on mortgage.

Investigation
of title and
searches for
incumbrances.

Value of
security.

Risk attending
a second mort-
gage.

Precautions to
be taken by a
person lending
money on a
second mort-
gage.

A mortgagee should make the same investigation of the title and searches for incumbrances as a purchaser. He should also take care to satisfy himself that the property is of sufficient value. The ordinary rule is, that the money advanced should not exceed two-thirds of the value of the property if freehold lands of inheritance, but if the principal part of the property consists of buildings, not more than half its value should be advanced on it.

It is evident, from what has been stated in the former part of this Dissertation, that a person lending money on the security of an equity of redemption incurs some risk. For example, the mortgagor may have previously made equitable mortgages in addition to the first mortgage, all which equitable mortgages will have priority, on the principle of *qui prior est tempore potior est jure*. Again, if the mortgagor should, after executing such second mortgage, make a third mortgage, concealing from the third mortgagee the existence of the second mortgage, the third mortgagee may, by paying off the first mortgage, gain a priority over the second, upon the principle of tacking above explained.

If, notwithstanding the above objections, the weight of which depends in each case upon the circumstances, a person agrees to lend money on a second mortgage, he should inquire of the first mortgagee how much is due upon his security, and when the second mortgage is completed, notice of it should be given to the first mortgagee. Such notice will prevent him from tacking any subsequent advance which he may make on

the security of the property, although the original mortgage may be expressly made to cover future advances (*r*).

Where the subject of the mortgage is a debt, or personalty vested in trustees, or a policy of assurance, notice of the mortgage should be given to the debtor or trustees, or assurance office, as the case may be; and if the subject of the mortgage is money to arise from the sale or mortgage of land, notice should be given to the trustees in whom the duty or power of selling or mortgaging is vested, although the time of sale or mortgaging may not have arrived (*s*). If such notice is not given, the mortgagee will be postponed to a subsequent mortgagee who advances his money without notice of the prior mortgage, and himself gives due notice of his own security (*t*).

On mortgages of personalty notice should be given to trustees.

Notice is also necessary as against the debtor or trustee himself, for payment to the original creditor will be a satisfaction of the debt, notwithstanding that the creditor may have assigned it to another for a valuable consideration, if the debtor has no notice of such assignment; and if the debtor has been released in a general settlement of accounts, instead of actually paying the money, the release is equally effectual (*u*).

Notice necessary to prevent debtor from paying original creditor.

Information given casually in the course of conversation, even by the assignee himself, would not amount to a notice (*x*). But a notice given by the assignor formally and distinctly, or in such a manner as to fix the person to whom the notice is given with the consequences of acting contrary to the knowledge he has thus acquired, will be effective, although the assignee himself has given no notice (*y*).

Notice should be a formal one—trustee not bound by information casually obtained.

(*r*) *Rolt v. Hopkinson*, 3 De G. & J. 177; *Bradford Banking Co. v. Briggs*, 29 Ch. D. 19.

(*s*) *Lee v. Howlett*, 2 Kay & Joh. 501; *Foster v. Cockerell*, 3 Cl. & Fin. 456; *Re Hughes' Trusts*, 2 H. & M. 89; see also *Bridge v. Beadon*, L. R. 3 Eq. 664.

(*t*) *Loveridge v. Cooper*, 3 Russ. 1; *In re Freshfield's Trust*, 11 Ch.

D. 198.

(*u*) *Stocks v. Dobson*, 4 De G. M. & G. 11.

(*x*) *North British Co. v. Hallett*, 7 Jur. (N. S.) 1263; *Edwards v. Martin*, L. R. 1 Eq. 121.

(*y*) *Ex parte Agra Bank*, L. R. 3 Ch. 555; *Lloyd v. Banks*, 5 Ch. Ap. 488.

Notice by trustee in bankruptcy not necessary.

The rule as to the necessity of notice, in order to give priority, was extended to assignees under the Insolvent Acts formerly in force (*z*); but it does not apply to trustees in bankruptcy, so that a trustee in bankruptcy not giving notice to the debtor or trustee of the fund, will not be postponed to a subsequent assignee for value, who, having no notice of the bankruptcy, gives notice of his assignment (*a*).

Intended mortgagee should inquire of trustee as to prior incumbrances.

Before advancing his money on the security of a chose in action or equitable interest in a fund vested in trustees, a prudent mortgagee will, of course, inquire of the debtor or trustee, and in case of a policy of assurance, of the assurance office, whether notice has been received of any prior incumbrance. If, however, he neglects to make such inquiry, but gives notice of his own security, he will not, on account of his neglect to inquire, be postponed to a prior incumbrancer who has given no notice, because the inquiry, if made, would not have given him the necessary knowledge.

Notice of assignment before bankruptcy.

Previously to the Bankruptcy Act, 1869, a chose in action, which was the subject of a mortgage, but of which no notice had been given to the debtor or trustee, was, in the event of the bankruptcy of the assignor, deemed to be within his order and disposition, with the consent of the true owner, and saleable accordingly in the bankruptcy (*b*). Notice at any time before the bankruptcy was sufficient, although a long time might have been permitted to elapse between the execution of the equitable assignment and the giving such notice (*c*).

(*z*) *In re Atkinson*, 2 De G. M. & G. 140.

(*a*) See *In re Bright's Settlement*, 13 Ch. D. 413, overruling *In re Russell's Policy Trusts*, L. R. 15 Eq. 26; and *In re Webb's Policy*, 15 W. R. 519.

(*b*) *Ryall v. Rowles*, 1 Ves. sen. 348; *Williams v. Thorp*, 2 Sim. 257; *Re Hughes' Trusts*, *ubi supra*. Notice to the official liquidator of the assignment of a debt due from the company has been held to be suffi-

cient to protect the security as against the subsequent bankruptcy of the assignees. (L. R. 5 Eq. 284.) In a case where the mortgagees were solicitors, and one of them was one of the trustees of the fund, it was held that the notice which he had of the charge was sufficient. (*Ex parte Rogers*, 8 De G. M. & G. 271.)

(*c*) *Re Pearce, Ex parte Littledale*, 24 L. T. R. 318.

By the Bankruptcy Act, 1869, it was provided (*d*), that *things in action* other than debts due to the bankrupt in the course of his business, shall not be deemed goods and chattels within his order and disposition. It has been held that shares in a Gas Company, standing in the bankrupt's name, are not things in action within this section (*e*). But in a case where railway shares were standing in the name of a first mortgagee, it was held that the mortgagor's interest in them was a chose in action, and consequently that they were not saleable by the trustee in bankruptcy as against a second mortgagee, who had given no notice either to the company or to the first mortgagee (*f*). So a debenture of a Joint-stock Company, by which the company undertook to pay a sum, and to charge their undertaking and property with the payment thereof (*g*), and also a policy of assurance (*h*), were respectively held to be things in action within the meaning of the section. It is now provided by the 44th section of the Bankruptcy Act, 1883 (which repeals the Bankruptcy Act, 1869), that things in action other than debts due or growing due to the bankrupt in the course of his trade or business shall not be deemed goods within his order or disposition. It is apprehended that the words of the 44th section of the last-mentioned Act will receive the same construction as the 15th section of the Bankruptcy Act, 1869, which has been repealed. A share in an incorporated company is a thing in action within the Bankruptcy Act, 1883 (*i*).

Provision of Bankruptcy Act, 1883, as to things in action.

It is not *necessary* to give notice to more than one of the trustees, so long as the circumstances of the case remain unaltered by the death of that trustee, or his ceasing to be a trustee or otherwise (*k*).

Notice to one of several trustees sufficient.

(*d*) 32 & 33 Vict. c. 71, s. 15.
(*e*) *Ex parte* Union Bank of Manchester, L. R. 12 Eq. 354.

(*f*) *Ex parte* Barry, L. R. 17 Eq. 113.

(*g*) *In re* Pryce, 6 C. D. 685.

(*h*) *Ex parte* Ibbetson, 8 Ch. D. 519.

(*i*) Colonial Bank v. Whinney, 11 H. L. Cas. 426.

(*k*) Smith v. Smith, 2 Cro. & M. 231; Tenison v. Ramsbottom, 2 Keen, 35; Meux v. Bell, 1 Hare, 73, 97; Bridge v. Beedon, L. R. 3 Eq. 664.

Effect of notice to assignor, being himself a trustee.

Where the assignor was himself one of the trustees, as well as one of the *cestuis que trust*, it was held by Vice-Chancellor Kindersley, that a notice to such assignor was not sufficient, on the ground that he had a motive for concealing the prior assignment from any person to whom he might make a second assignment (*l*); but in a more recent case (*m*), where on a mortgage by a husband and wife of the wife's reversionary interest, notice was given to the husband, he being one of the trustees of the fund, it was held by Lord Westbury that the notice was sufficient, as in dealing with a trustee it was to be assumed that he would deal honestly. It may, therefore, be considered settled, that the fact of the assignor being himself the trustee, does not affect the validity of the notice given to him.

Notice should be given to all the existing trustees.

It is, however, in all cases prudent to give notice to all the existing trustees; for in case notice of an incumbrance is given to one only of several trustees, and the trustee to whom such notice is given dies, and after his death a second incumbrancer, not having actual knowledge of the first incumbrance, gives notice of his security to the surviving trustees, the second incumbrancer would by his notice gain a preference; for in the altered circumstances which the death of the trustee who alone had notice of the first incumbrance introduces, inquiry of all the existing trustees would not have led the inquirer to a knowledge of the previous incumbrance.

Notice to solicitor of trustees not sufficient.

Notice to the solicitor of the trustees is not sufficient, unless such notice is communicated to the trustees either verbally or in writing (*n*).

When reversionary fund is subject of settlement.

If a reversionary fund is made the subject of settlement, and a *cestui que trust* under such settlement should charge or otherwise dispose of his share, it will be prudent for the assignee to give notice of the

(*l*) *Brown v. Savage*, 4 Drew. 635.

(*m*) *Willes v. Greenhill*, 29 Beav. 387, 393; 31 L. J. (N. S.) Ch. 1; *In re Lewer*, 1 Ch. D. 101; *Brown's*

Trusts, 5 Eq. 88.

(*n*) *Saffron Waldon Benefit Building Soc. v. Rayner*, 14 Ch. D. 406; *ib.* 696.

assignment, not only to the trustees of the settlement, but also to the trustees of the document under which the settlor became entitled.

Where in the case of a sub-mortgage of a policy of assurance the sub-mortgagee gave notice to the executor of a prior mortgagee, and not to the assurance office, and the sub-mortgagor became bankrupt, such policy was held to be in the order and disposition of the bankrupt, and, as between the sub-mortgagee and the assignees, to belong to the assignees (o).

Notice on sub-mortgage of policy.

The 30 & 31 Vict. c. 144, provides that no assignment shall confer on the assignee a right to sue for the policy moneys until a written notice in the form prescribed by the Act is given to the Company at their principal place of business, and that the date on which such notice is received shall regulate the priority of all claims under any assignment (p).

30 & 31 Vict. c. 144.

Notice before a fund has come into existence to a person who is merely a potential future trustee, is ineffectual. Thus notice of a covenant to pay to covenantees the proceeds of a commission in the army, given to the army agent before any sale is actually made, is ineffectual (q).

Effect of notice before fund has come into existence.

New trustees of trust funds in settlement are not bound to inquire of the old trustees whether they have received any notices of dealings by the *cestuis que trust*. If, therefore, an assignee or incumbrancer of a *cestui que trust* gives notice to the then trustees, and the latter retire and do not pass on the notice to the new trustees, the assignee or incumbrancer runs the risk of having the trust property distributed without reference to his claim. In order to be safe, he must either put a *distringas* on the funds, or have notice indorsed on the original trust deed (r).

New trustees not bound to inquire of old trustees whether they have received notice of incumbrances.

Where money or stock is in Court, the mortgagee should obtain a stop order (s).

When mortgagee should obtain stop order.

(o) *Thompson v. Tomkins*, 2 Drew. 490. & Sm. 8.

(p) Sects. 2, 3.

(q) *Buller v. Plunkett*, 1 J. & H. 441; *Somersett v. Cox*, 33 L. J. Ch.

(r) *Phipps v. Lovegrove*, L. R. 16 Eq. 80.

(s) See *Mutual Life Assurance Soc. v. Langley*, 26 Ch. D. 686.

XI. *Transfers of mortgages and reconveyances.*

Usual form of transfer of mortgage.

The usual form of a simple transfer of mortgage is —1st, an assignment of the mortgage debt; and, 2ndly, a conveyance of the property, which is the subject of the mortgage, to the transferee, subject to the equity of redemption subsisting under the mortgage deed.

Power of attorney to sue in name of transferor no longer necessary.

As, until lately, the mortgage debt, as secured by the mortgagor's covenant, was not assignable at law, it has been usual and proper to insert in the transfer deed a power of attorney enabling the transferee to sue for the debt in the name of the transferor; but since it is now provided by the Judicature Act, that an assignment of a debt shall be effectual in law, if notice is given to the debtor (*t*), a power of attorney is no longer necessary, if the mortgagor is a party to the deed or otherwise has notice of it.

Mortgagor should be made party to transfer, to admit the amount due.

A person advancing money on the security of a transfer of a mortgage should make the mortgagor a party to the deed, if his concurrence can be obtained, for the purpose of admitting that the mortgage-money remains due. In the absence of such admission the transferee will take subject to the state of the account between the mortgagor and the original mortgagee and to all equities subsisting between them.

Form of deed where transferee makes a further advance.

If a further sum is at the time of the transfer advanced by the transferee to the mortgagor, it is usual to convey the property free from the old proviso for redemption, and subject to a new one with new covenants for payment, the old mortgage debt being at the same time transferred as a protection against mesne incumbrances (if any). Sometimes, however, the deed is made to take the form of an ordinary transfer, followed by a covenant creating a further charge for the new advance.

The recent Act gives a statutory force to some short forms of transfer given in a schedule.

Plan to be adopted on a transfer of mortgage of copyholds.

Where copyholds are the subject of a mortgage, and there has been a conditional surrender of them to the mortgagee, but (as is usual) no admittance on such surrender, the ordinary and proper mode of effecting a transfer is for the mortgagor to make a new

conditional surrender to the transferee, satisfaction being at the same time entered upon the old surrender. If, however, the concurrence of the mortgagor cannot be obtained, it is necessary, in order to vest the legal estate in the transferee, that the transferor should be admitted tenant on the original surrender, and should then surrender again to the transferee, subject to the mortgagor's right of redemption; but this proceeding would, in many cases, involve a heavy expense in the way of fines and fees to the lord and steward, and to avoid it a transferee may sometimes be advised to accept a declaration of trust by the transferor of the benefit of the original surrender.

Upon payment of principal, interest, and costs, the mortgagor is entitled to a reconveyance at his own expense of the mortgaged property. If the mortgage is of freeholds, and the mortgagee has died intestate before the 1st January, 1882, the legal estate will have descended on his heir, who, until a recent statute, would have been the proper person to reconvey; and if he was an infant, it would have been necessary to get a vesting order through the Court under the Trustee Act. By the Vendor and Purchaser Act, 1874 (*u*), it was enacted that the legal personal representative of a mortgagee of a freehold estate, or of a copyhold estate to which the mortgagee shall have been admitted, may, on payment of all sums secured by the mortgage, convey or surrender the mortgaged estate, whether the mortgage be in form an assurance subject to redemption, or an assurance upon trust. The Conveyancing Act, 1881, repeals the above clause in the Vendor and Purchaser Act, as regards all mortgagees dying after the 31st December, 1881, and provides, with respect to such mortgagees, that where an estate or interest of inheritance, or limited to the heir as special occupant, in any tenements or hereditaments is vested by way of mortgage in any person solely, the same shall, on his death, notwithstanding any testamentary disposition, devolve on his personal representative as if it were a chattel real (*x*).

Mortgagor entitled to a reconveyance on payment of mortgage debt.

Under Vendor and Purchaser Act legal personal representative could, on payment of all money secured by mortgage, reconvey.

Now, under Conveyancing Act, 1881, mortgaged estate vests in personal representative.

(*u*) Sect. 4.

(*x*) Sect. 30, sub-sect. 2. This sub-section has been repealed as to copyholds. See *supra*, p. 266.

Sect. 4 of Vendor and Purchaser Act does not apply to a transfer or to a sale under a power.

It has been held that section 4 of the Vendor and Purchaser Act applies only to a reconveyance strictly so-called, *i.e.*, a reconveyance to the mortgagor or those claiming under him, but not to a transfer of the whole debt in consideration of the full amount paid by the transferee to the transferor (*y*), or to a sale under a power contained in the mortgage deed (*z*). The decision seems a narrow one, but the point is of little importance, having regard to the more comprehensive provision in the Act of 1881.

Trustee Act, 1850.

In cases where the legal estate has descended on an infant, and the above enactments do not apply, it will be necessary to obtain a vesting order under the "Trustee Act, 1850" (*a*).

Vesting order in case of lunatic mortgagee.

Where a mortgagee becomes lunatic, a vesting order must be obtained from the judges of the High Court of Justice, or of the Court of Appeal, entrusted with the care of lunatics by the Queen's sign manual (*b*).

Where mortgage is of copyholds, warrant of satisfaction should be entered up, unless mortgagee has been admitted.

Where the mortgage is of copyholds, and the mortgagee has not been admitted, it is sufficient to enter up satisfaction on the Court rolls, and a warrant for this purpose should be given to the steward. If he has been admitted, a surrender to the mortgagor will be necessary.

Where mortgage is for a term, surrender usual, but not necessary.

Where a mortgage of freeholds is for a term of years only, it is usual to have a surrender on the mortgage being paid off; but a receipt in full endorsed on the deed will have the same legal effect, as the term being satisfied by payment will cease.

Obligation on mortgagees if required to transfer instead of reconveying.

The 15th section of the Conveyancing Act, 1881, enacts that where a mortgagor is entitled to redeem he shall have power to require the mortgagee, instead of reconveying and on the terms on which he would be bound to reconvey (*c*), to assign the mortgage debt and convey the mortgaged property to any third party, as

(*y*) See *In re Spradbery's Mortgage*, 14 Ch. D. 514.

(*z*) *In re White's Mortgage*, 29 W. R. 820.

(*a*) 13 & 14 Vict. c. 60, ss. 7, 8.

(*b*) 13 & 14 Vict. c. 60, ss. 3—6; 15 & 16 Vict. c. 87, s. 15; 38 & 39 Vict. c. 77, s. 7.

(*c*) Accordingly, where a tenant for life of mortgaged premises had obtained an order, permitting him to redeem, he, having failed to keep down the interest, so that there was a considerable arrear of interest, was not allowed to avail himself of this 15th section. (*Alderson v. Elgey*, 26 Ch. D. 567.)

the mortgagor directs; and the 12th section of the Conveyancing Act, 1882, declares that this right shall belong to and be capable of being enforced by each incumbrancer or by the mortgagor, notwithstanding any intermediate incumbrance, but that a requisition of an incumbrancer shall prevail over a requisition of the mortgagor, and that, as between incumbrancers, a requisition of a prior incumbrancer shall prevail over a requisition of a subsequent incumbrancer.

Where land has been registered under the "Land Transfer Act, 1875," it can only be mortgaged so as to confer on the mortgagee a good title against subsequent purchasers or mortgagees, in the manner prescribed by the Act and the Rules and Orders made in pursuance thereof (38 & 39 Vict. c. 87, ss. 22 to 28). And a deposit of the land certificate is by the Act made equivalent to a deposit of title deeds so as to create an equitable mortgage (sect. 81).

Mortgages
of registered
land.

XII. *Stamps on mortgages and deeds relating to mortgages.*

Stamps on
mortgages.

By the "Stamp Act, 1870" (d) as amended by subsequent Acts (e), MORTGAGE, bond, debenture, covenant, warrant of attorney to confess and enter up judgment, and foreign security of any kind;

(1.) Being the only or principal or primary security for—

		£	s.	d.
The payment or repayment of money not exceeding £10	.	0	0	3
Exceeding £10 and not exceeding £25	.	0	0	8
" 25	" 50	0	1	3
" 50	" 100	0	2	6
" 100	" 150	0	3	9
" 150	" 200	0	5	0
" 200	" 250	0	6	3
" 250	" 300	0	7	6
" 300				

For every £100, and also for any fractional part of £100, of such amount . . . 0 2 6

(d) 33 & 34 Vict. c. 97.

(e) 46 & 47 Vict. c. 55, s. 15; 51 Vict. c. 8.

(2.) Being a collateral, or auxiliary, or additional or substituted security, or by way of further assurance for the above-mentioned purpose, where the principal or primary security is duly stamped ;

£ s. d.

For every £100, and also for any fractional part of £100 of the amount secured .

. 0 0 6

Stamps on transfers of mortgages.

(3.) TRANSFER, assignment, disposition, or assignation of any mortgage, bond, debenture, or covenant (not being a marketable security), or of any money or stock secured by any such instrument, or by any warrant of attorney to enter up judgment, or by any judgment ;

For every £100 and also for any fractional part of £100 of the amount transferred, assigned, or disposed

. 0 0 6

And also where any further sum of money is added to the money already secured

The same duty as a principal security for such further money.

Stamps on reconveyance.

(4.) RECONVEYANCE, release, discharge, surrender, re-surrender, warrant to vacate or renunciation of any such security as aforesaid, or of the benefit thereof, or of the money thereby secured ;

For every £100, and also for any fractional part of £100, of the total amount or value of the money at any time secured

. 0 0 6

Interpretation of term.

The term "mortgage" means a security by way of mortgage for the payment of any definite and certain sum of money advanced or lent at the time, or previously due and owing, or forborne to be paid, being payable, or for the repayment of money to be thereafter lent, advanced, or paid, or which may become due upon an account current, together with any sum already advanced or due, or without, as the case may be.

And includes :—

Conditional surrender by way of mortgage, further charge,

wadset, and heritable bond, disposition, assignation, or tack in security, and eik to a reversion of or affecting any lands, estate, or property, real or personal, heritable, or moveable whatsoever.

Also any deed containing an obligation to infest any person in an annual rent, or in lands or other heritable subjects in Scotland under a clause of reversion, but without any personal bond or obligation therein contained for payment of the money or stock intended to be secured.

Also any conveyance of any lands, estate, or property whatsoever in trust to be sold or otherwise converted into money, intended only as a security, and redeemable before the sale or other disposal thereof, either by express stipulation or otherwise, except where such conveyance is made for the benefit of creditors generally, or for the benefit of creditors specified, who accept the provision made for payment of their debts in full satisfaction thereof, or who exceed five in number.

Also any defeazance, letter of reversion, back bond, declaration, or other deed or writing, for defeating or making redeemable or explaining or qualifying any conveyance, disposition, assignation, or tack of any lands, estate, or property whatsoever, apparently absolute, but intended only as a security.

And also any deed whereby a real burden is declared or created on lands or heritable subjects in Scotland (g).

An equitable mortgage effected by an agreement or memorandum under hand only relating to the deposit of any title deeds or instruments constituting or being evidence of the title to any property (other than stock or marketable security), or creating a charge on such property, is not liable to the above *ad valorem* duty on a mortgage, but to a duty of one shilling for every £100, and fractional part of £100 (h). Equitable mortgages.

When the total amount, which is at any time secured by any equitable mortgage is unascertained or unlimited in the first instance, and the *ad valorem* stamp duty impressed on the agreement or memorandum, in conformity with sect. 15, is available under sect. 107 of the Stamp Act, 1870, for such

(g) Sect. 105.

(h) Act of 1888, s. 15, sub-s. 1.

an amount only as such duty extends to cover, such agreement or memorandum is for the purpose of stamp duty deemed to be a new and separate agreement or memorandum, bearing date on the day on which any advance or loan is made in excess of the amount covered by the duty impressed thereon (i).

Security for stock, how to be charged.

A security for the transfer or retransfer of any stock is to be charged with the same duty as a similar security for a sum of money equal in amount to the value of such stock; and a transfer, assignment, disposition, or assignation of any such security, and a reconveyance, release, discharge, surrender, re-surrender, warrant to vacate, or renunciation of any such security, shall be charged with the same duty as an instrument of the same description relating to a sum of money equal in amount to the value of such stock (k).

Security for future advances, how to be charged.

A security for the payment or repayment of money to be lent, advanced, or paid, or which may become due upon an account current, either with or without money previously due, is to be charged, where the total amount secured or to be ultimately recoverable is in any way limited, with the same duty as a security for the amount so limited.

Where such total amount is unlimited, the security is to be available for such an amount only as the *ad valorem* duty impressed thereon extends to cover.

Proviso.

But that no money to be advanced for the insurance of any property comprised in any such security against damage by fire, or for keeping up any policy of life insurance comprised in such security, or for effecting in lieu thereof any new policy, or for the renewal of any grant or lease of any property comprised in such security upon the dropping of any life whereon such property is held, is to be reckoned as forming part of the amount in respect whereof the security is chargeable with *ad valorem* duty (l).

Security for repayment by periodical payments, how to be charged.

A security for the payment of any rent-charge, annuity, or periodical payments by way of repayment or in satisfaction or discharge of any loan, advance, or payment, intended to be so repaid, satisfied, or discharged, is to be charged with the same duty as a similar security for the payment of the sum of money so lent, advanced, or paid (m).

(i) Act of 1888, s. 15, sub-s. 2.
(k) Sect. 106.

(l) Sect. 107.
(m) Sect. 108.

No transfer of a duly stamped security, and no security by way of further charge for money or stock, added to money or stock previously secured by a duly stamped instrument, is to be charged with any duty by reason of containing any further or additional security for the money or stock transferred or previously secured, or the interest or dividends thereof, or any new covenant, proviso, power, stipulation, or agreement in relation thereto, or any further assurance of the property comprised in the transferred or previous security (*n*).

As to transfers and further charges.

Where any copyhold or customary lands or hereditaments are mortgaged alone by means of a conditional surrender or grant, the *ad valorem* duty is to be charged on the surrender or grant, if made out of Court, or the memorandum thereof, and on the copy of Court Roll of the surrender or grant, if made in Court.

As to copyholds.

Where any copyhold or customary lands or hereditaments are mortgaged, together with other property, for securing the same money or the same stock, the *ad valorem* duty is to be charged on the instrument relating to the other property; and the surrender or grant, or the memorandum thereof, or the copy of Court Roll of the surrender or grant, as the case may be, is to be charged with duty as if the surrender or grant were not made upon a mortgage, but such last-mentioned duty shall not exceed the said *ad valorem* duty (*o*).

An instrument chargeable with *ad valorem* duty as a mortgage is not to be charged with any other duty by reason of the equity of redemption on the mortgage property being thereby conveyed or limited in any other manner than to, or in trust for, or according to the direction of, a purchaser (*p*).

As to mortgage with conveyance of equity of redemption.

The Act of 1870 provides that the exemption (*q*) from stamp duty conferred by the Act of the sixth and seventh years of King William the Fourth, chapter thirty-two, for the regulation of Benefit Building Societies, shall not extend to any mortgage to be made after the passing of this Act, except a mortgage by

Exemption from stamp duty in favour of benefit building societies restricted.

(*n*) Sect. 109.

(*o*) Sect. 110.

(*p*) Sect. 111.

(*q*) The exemption referred to is conferred by the 8th section of the 6 & 7 Will. IV. c. 32, which enacts

that no rules of any such society, or any copy thereof, nor any transfer of any share or shares in any such society, shall be subject to any stamp duty or duties whatsoever.

a member of a Benefit Building Society, for securing the repayment to the society of money not exceeding five hundred pounds. The Act of William the Fourth is repealed by the "Building Societies Act, 1874" (*r*), as regards any society obtaining a certificate of incorporation under the latter Act; and the same Act (*s*) provides for the exemption from stamp duty of all documents except mortgages. It would therefore appear that mortgages to Building Societies incorporated under the new Act require an *ad valorem* stamp, whatever may be the amount secured thereby.

Penalties for
not stamping.

The provisions in the Customs and Inland Revenue Act, 1888 (*t*), as to the further penalties for not stamping deeds, apply to mortgages and transfers of mortgages, and reconveyances, and make the mortgagee, transferee, or person redeeming, as the case may be, liable to pay the forfeit.

(*r*) 37 & 38 Vict. c. 42, s. 7.
(*s*) Sect. 41.

(*t*) Sect. 18, and 1st Sched.

No. I.

MORTGAGE in Fee of FREEHOLDS to ONE PERSON (u).

OF FREEHOLDS
TO ONE.

THIS INDENTURE, made the — day of —, BETWEEN Parties.
 A. B., of, &c. (*mortgagor*), of the one part, and C. D., of, &c. (*mortgagee*), of the other part, WITNESSETH that in consideration of the sum of £— paid to the said A. B. by the said C. D. on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges), the said A. B. hereby covenants with the said C. D. to pay to him on the — day of — next, the sum of £— with interest thereon in the meantime after the rate of £— per cent. per annum, computed from the date of these presents; and also so long after that day as any principal money remains due under these presents, to pay to him interest thereon after the same rate by equal half-yearly payments on the — day of —, and the — day of — (x): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid the said A. B., as beneficial owner, hereby conveys unto the said C. D. ALL, &c. (*parcels*), To HOLD the same unto and to the use of the said C. D., in fee simple: PROVIDED ALWAYS, that if the said sum of £—, with interest thereon, shall be paid on the — day of — next, according to the foregoing covenant in that behalf, the said premises shall, at the request and cost of the said A. B., his heirs or assigns, be re-

Covenant by
mortgagor to
pay principal
and interest.Mortgagor
conveys to
mortgagee,
subject to
proviso for
redemption.

(u) If the mortgagee is a married woman, who has married since the 31st of December, 1882, she will be described as "C. D., the wife of E. D., to whom she was married since the 31st day of December, 1882," and the advance will be stated to be made by her "out of her separate property." In other respects, the deed will be in the same form as Precedent No. I., as to freeholds; Precedent No. VII., *infra*, p. 540, as to copyholds; and Precedent No. IX., *infra*, p. 542, as to leaseholds, substituting "she" for "he" and "her" for "him" when necessary.

Description of
mortgagee,
a married
woman, who
has married
since 1882.

(x) If the separate covenant to pay interest is omitted, the mortgagee will be entitled to recover interest from the day of default by way of damages, and the rate would be that fixed by the parties unless it exceeds £5 per cent.; in which case £5 per cent. only would be allowed. (*Re Roberts*, 14 Ch. D. 49.) Moreover, if there is no separate covenant, interest could only be recovered by calling in the principal.

**OF FREEHOLDS
TO ONE.**

Covenant for
insurance
against fire.

Power of
leasing con-
ferred by Act
on mortgagor
not to be exer-
cised without
consent.

conveyed to him or them [AND the said A. B. hereby cove-
nants with the said C. D. that he, the said A. B., his heirs and
assigns, will at all times during the continuance of this security
keep the messuage and buildings comprised herein insured
against loss or damage by fire in the sum of £—— at least [or
in a sum equal to three-fourths of the value thereof] in the ——
Insurance Office, or in some other insurance office approved by
the said C. D., his executors, administrators or assigns, and will
on demand produce to him or them the policy of such insur-
ance, and the receipt for every premium payable in respect
thereof (y).] [AND IT IS HEREBY DECLARED that no [building]
lease made by the said A. B., his heirs or assigns, of the said
premises, or any part thereof, during the continuance of this
security, shall have effect by force or virtue of section 18 of the
Conveyancing and Law of Property Act, 1881, unless the said
C. D., his executors, administrators, or assigns, shall consent
thereto in writing (z).]

IN WITNESS, &c.

When part of
security is
buildings.

As to negativ-
ing statutory
power of
leasing.

(y) This covenant will be inserted where a substantial part of the secu-
rity consists of buildings. If the mortgagor does not perform the above
covenant, the mortgagee is empowered to insure and to add the premiums
to his mortgage-money. (*Supra*, pp. 479, 480.)

(z) The above clause negating the statutory power of leasing is not to
be inserted in every mortgage as a matter of course. If the property con-
sists of a landed estate of ample value, it is reasonable and convenient
that the mortgagor while he remains in possession should have all the
powers necessary to the due management of the estate, including that of
granting leases for twenty-one years to tenants, and as the rent must be a
rack-rent, the mortgagee is not likely to be prejudiced. As regards house
property in a town, the case is different, particularly if the security is
scanty, and as a general rule a mortgagee may not unreasonably require
that his consent should be asked before a lease is granted. This observa-
tion applies with additional force to the power of granting building leases
for 99 years.

Sometimes it may be desired to exclude building leases only, in which
case the word "building" may be inserted before "lease" in the proviso
in the text.

No. II.

STATUTORY MORTGAGE *in FEE* (a).

STATUTORY
MORTGAGE IN
FEE.

THIS INDENTURE, made by way of statutory mortgage, the — day of —, 18—, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c. (*mortgagee*), of the other part, WITNESSETH, that in consideration of the sum of £— now paid to the said A. B. by the said C. D., of which sum the said A. B. hereby acknowledges the receipt, the said A. B., as mortgagor and as beneficial owner, hereby conveys to the said C. D. All that, &c. (*parcels*): To HOLD to and to the use of the said C. D. in fee simple, for securing payment on the — day of —, 188—, of the principal sum of £—, as the mortgage money with interest thereon at the rate of £— per centum per annum.

Parties.

IN WITNESS, &c.

(a) This form of statutory mortgage is given in the 3rd Schedule to the Conveyancing Act, 1881, and it includes by virtue of the Act, first, a covenant with the mortgagee by the person therein expressed to convey as mortgagor, to the effect that the mortgagor will, on the stated day, pay to the mortgagee the stated mortgage money, with interest thereon in the meantime, at the stated rate, and will thereafter, if and as long as the mortgage money or any part thereof remains unpaid, pay to the mortgagee interest thereon, or on the unpaid part thereof, at the stated rate, by equal half-yearly payments, the first thereof to be made at the end of six calendar months from the day stated for payment of the mortgage money: and, secondly, a proviso to the effect that if the mortgagor, on the stated day, pays to the mortgagee the stated mortgage money, with interest thereon in the meantime, at the stated rate, the mortgagee, at any time thereafter, at the request and cost of the mortgagor, shall re-convey the mortgaged property to the mortgagor, or as he shall direct.

Effect given
by Act to
statutory
mortgage.

It may be observed that the Act would have been more complete, if it had provided that in every conveyance made by way of mortgage a proviso for redemption should be implied, instead of making it necessary to use the word "statutory," and to adopt a special form in order to give a deed this operation. There is no objection to the use of the statutory mortgage form in simple cases, but where any additional provisions are desired, such additions fit in better to a deed in the form of Precedent No. I., and as the slight difference in length is hardly worth consideration, it is probable that the statutory form will not be generally adopted.

Observations
on statutory
forms.

No. III.

FOR TIME
CERTAIN, WITH
REDUCTION
OF INTEREST
ON PUNCTUAL
PAYMENT.

MORTGAGE in FEE *with* PROVISIONS for REDUCING
the rate of INTEREST in case of PUNCTUAL PAYMENT,
and for continuing the LOAN for a TIME CERTAIN (a).

Parties.

THIS INDENTURE, made the — day of —, BETWEEN
A. B., of, &c. (*mortgagor*), of the one part, and C. D., of, &c.
(*mortgagee*), of the other part, WITNESSETH, that in conside-
ration, &c., the said A. B., &c. (*covenant to pay principal money
and interest as in Precedent No. I., supra*, p. 531, adding
at the end of the covenant for payment of interest the follow-
ing): PROVIDED ALWAYS, that if and whenever a half year's
interest for the said principal sum of £—, after the rate
of £4 per cent. per annum, shall be paid upon the half-
yearly day hereinbefore appointed for payment of interest, or
within one calendar month thereafter, the same shall be ac-
cepted in lieu of and in satisfaction for the interest after the
rate of £5 per cent. per annum, payable for that half year under
the foregoing covenant in that behalf, but no claim for reduction
shall be made under this clause in respect of any half-yearly
payment of interest not made within the time aforesaid (b):
AND THIS INDENTURE ALSO WITNESSETH, that
for the consideration aforesaid the said A. B., &c. (*Conveyance
to mortgagee in fee simple subject to redemption, and covenant for
insurance against fire and declaration as to leasing power where
applicable, supra*, p. 532): PROVIDED ALWAYS, and it is hereby
agreed and declared, that payment of the principal money
hereby secured shall not be required until the expiration of
— years computed from the date hereof, if in the meantime
every half-yearly payment of interest shall be made upon the
day hereinbefore appointed for payment thereof, or within
one calendar month thereafter [and the covenant of the said
A. B. hereinbefore contained for keeping the said premises

Proviso for
reduction of
interest in case
of punctual
payment.

Proviso that
mortgagee
shall not call
in money for
a term.

(a) It must not be supposed that where there is a provision for reducing the rate of interest on punctual payment, it is always accompanied by a provision for continuing the loan for a time certain, or *vice versa*. The latter is only inserted where specially arranged for; the former is in very common use.

(b) See p. 478, *supra*.

insured against loss or damage by fire shall be duly observed and performed]: But upon any sale made under the statutory power in that behalf before the expiration of the aforesaid period, the purchaser shall not be bound or concerned to see or inquire whether such sale is consistent with this proviso, and if a sale is made in breach thereof the title of the purchaser shall not be impeached on that account: PROVIDED ALSO, and it is hereby further agreed and declared, that the said A. B., or any person claiming under him, shall not be at liberty to pay off the said principal sum of —, or any part thereof, before the expiration of — years, computed from the date of these presents, unless the said C. D., his executors, administrators, or assigns, shall be willing to receive the same earlier, nor to pay the same on or after the expiration of the said period without giving the usual six months' notice of intention so to do.

IN WITNESS, &c.

FOR TIME
CERTAIN, WITH
REDUCTION
OF INTEREST
ON PUNCTUAL
PAYMENT.

Proviso that
purchaser
shall not be
affected by
above proviso.

Proviso that
mortgagor
shall not pay
off money
before end of
term.

No. IV.

MORTGAGE *in fee* of FREEHOLDS to persons LENDING
MONEY on a JOINT ACCOUNT (c).

FREEHOLDS TO
SEVERAL.

THIS INDENTURE, made the — day of — BETWEEN Parties.
A. B., of, &c. (*mortgagor*), of the one part, and C. D., of, &c.,

(c) Mortgages are generally taken in this form when the advance is made by trustees, it being important, for the sake of the title to the land, not to disclose the fact that the sum was advanced out of trust moneys. Such a disclosure would make the title to the money necessary to the title to the land by obliging a purchaser to see that the trustees were authorized to invest the trust money on real securities, and that the principal money when satisfied was paid into the hands of the persons or person who could give a good discharge for the same.

Form in which
mortgages to
trustees are
generally
taken.

It is provided by sect. 61 of the Conveyancing Act, 1881, as to mortgages made after the commencement of the Act, that where in a mortgage, or an obligation for payment of money, or a transfer of a mortgage, or of such an obligation, the sum, or any part of the sum advanced or owing is expressed to be advanced by or owing to more persons than one out of money, or as money belonging to them on a joint account, or a mortgage, or such an obligation, or such a transfer is made to more persons than one jointly, and not in shares, the mortgage money, or other money,

Effect of state-
ment that
money belongs
to mortgagees
on joint
account, &c.

**FREEHOLDS TO
SEVERAL.**

Mortgagor
covenants to
pay principal
money and
interest.

Mortgagor
conveys to
mortgagees in
fee simple sub-
ject to proviso
for redemp-
tion.

Covenant to
insure against
fire.

E. F., of, &c., and G. H., of, &c. (*mortgagees*), of the other part: WITNESSETH, that in consideration of the sum of £—— paid to the said A. B. by the said C. D., E. F., and G. H., on or before the execution of these presents, out of moneys belonging to them on a joint account (the receipt whereof the said A. B. hereby acknowledges) THE said A. B. hereby covenants with the said C. D., E. F., and G. H., to pay to them on the —— day of —— next, the sum of £——, with interest thereon in the meantime after the rate of £—— per cent. per annum, computed from the date of these presents: AND also so long after that day as any principal money remains due under these presents to pay to them interest thereon after the same rate by equal half-yearly payments on the —— day of ——, and the —— day of ——: AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid the said A. B., as beneficial owner, hereby conveys to the said C. D., E. F., and G. H., ALL, &c. (*parcels*): To HOLD the same unto and to the use of the said C. D., E. F., and G. H., in fee simple, PROVIDED ALWAYS, that if the said sum of £——, with interest thereon, shall be paid on the —— day of —— next, according to the foregoing covenant in that behalf, the said premises shall, at the request and cost of the said A. B., his heirs or assigns, be reconveyed to him or them: [AND the said A. B. hereby covenants with the said C. D., E. F., and G. H., that he the said A. B., his heirs and assigns, will at all times during the continuance of this security keep the messuage and buildings comprised herein, insured against loss or damage by fire, in the sum of £—— at least [or in a sum equal to three-fourths of the value thereof], in the —— Insurance Office, or in some other insurance office approved by the said C. D., E. F., and G. H., their executors, administrators, or assigns, AND WILL on demand produce to them the policy of such insurance and the receipt for every premium payable in respect thereof] (*d*).

or money's worth for the time being due to those persons on the mortgage or obligation, shall be deemed to be and remain money or money's worth belonging to those persons on a joint account, as between them and the mortgagor or obligor; and the receipt in writing of the survivors or last survivor of them, or of the personal representatives of the last survivor, shall be a complete discharge for all money or money's worth for the time being due, notwithstanding any notice to the payer of a severance of the joint account.

(*d*) See note (*y*), *supra*, p. 532.

(*If it is wished to negative the leasing power generally or the power to grant building leases only, add as follows*): AND IT IS HEREBY DECLARED that no [building] lease made by the said A. B., his heirs or assigns, of the said premises, or any part thereof, during the continuance of this security shall have effect by force or virtue of section 18 of the Conveyancing and Law of Property Act, 1881, unless the said C. D., E. F., and G. H., their executors, administrators, or assigns, shall consent thereto in writing.

IN WITNESS, &c.

FREEHOLDS TO SEVERAL.

Power of leasing conferred by Act on mortgagor not to be exercised without consent.

No. V.

MORTGAGE in FEE to persons LENDING MONEY on a JOINT ACCOUNT with PROVISIONS for REDUCING the RATE of INTEREST in case of PUNCTUAL PAYMENT and for CONTINUING the LOAN for a TIME CERTAIN.

TO SEVERAL FOR TIME CERTAIN, WITH REDUCTION OF INTEREST ON PUNCTUAL PAYMENT.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*mortgagor*), of the one part, and C. D., of, &c., E. F., of, &c., and G. H., of, &c. (*mortgagees*), of the other part: WITNESSETH, that in consideration, &c., the said A. B., &c. (*Covenant by mortgagor to pay principal and interest, supra*, p. 536): PROVIDED ALWAYS, that if and whenever a half-year's interest for the said principal sum of £—, after the rate of £4 per centum per annum shall be paid upon the half-yearly day hereinbefore appointed for payment of interest, or within one calendar month thereafter, the same shall be accepted in lieu of, and in satisfaction for, the interest after the rate of £5 per cent. per annum, payable for that half-year, under the foregoing covenant in that behalf, but no claim for reduction shall be made under this clause in respect of any half-yearly payment of interest not made within the time aforesaid: AND THIS INDENTURE ALSO WITNESSETH that, &c. (*Conveyance to mortgagees in fee, proviso for redemption, and covenant to insure against fire and declaration as to leasing power*

Parties.

Proviso for reduction of interest in case of punctual payment.

TO SEVERAL
FOR TIME
CERTAIN, WITH
REDUCTION OF
INTEREST
ON PUNCTUAL
PAYMENT.

Provisions for
continuing
loan for time
certain.

Purchaser not
to be affected
by above
proviso.

Proviso that
mortgagor
shall not pay
off money
before end of
term.

if applicable, supra, pp. 536, 537): PROVIDED ALSO, and it is hereby agreed and declared, that payment of the principal money hereby secured shall not be required until the expiration of — years, computed from the date of these presents, if in the meantime every half-yearly payment of interest shall be made upon the day hereinbefore appointed for payment thereof, or within one calendar month thereafter, [and the covenant of the said A. B. hereinbefore contained for keeping the said premises insured against loss or damage by fire shall be duly observed and performed]; BUT upon any sale, made under the statutory power in that behalf, before the expiration of the aforesaid period the purchaser shall not be bound or concerned to see or inquire whether such sale is consistent with this proviso, and if a sale is made in breach thereof, the title of the purchaser shall not be impeached on that account: PROVIDED ALSO, and it is hereby further agreed and declared, that the said A. B., or any person claiming under him, shall not be at liberty to pay off the said principal sum of £—, or any part thereof, before the expiration of — years, computed from the date of these presents, unless the said C. D., E. F., and G. H., their executors, administrators, or assigns, shall be willing to receive the same earlier, nor to pay the same on or after the expiration of the said term without giving the usual six calendar months' notice of intention so to do.

IN WITNESS, &c.

No. VI.

OF FREEHOLDS,
WITH EXPRESS
POWER OF
SALE.

MORTGAGE *of* FREEHOLDS *to* ONE *with express* POWER *of*
SALE (c).

THIS INDENTURE, &c. (*same as No. I. to end, adding as follows*): AND IT IS HEREBY AGREED AND DECLARED, that it shall

(c) It is considered that the power of sale conferred by the new Act is fully as advantageous to the mortgagee as that which was before the Act usually conferred by the deed. But as there may be circumstances in which a mortgagee would wish to have an express power, the above Precedent is retained.

be lawful for the said C. D., his executors, administrators, or assigns, at any time or times, without any further consent on the part of the said A. B., his heirs or assigns, to sell the hereditaments and premises hereby conveyed, or any part or parts thereof, either together or in lots, and either by public auction or private contract, and either with or without special conditions or stipulations relative to title or otherwise, with power to buy in at sales by auction, and to rescind contracts for sale, and to resell without being answerable for any loss or diminution in price, and with power also to execute assurances, give effectual receipts for the purchase-money, and do all other acts and things for completing the sale, which the said C. D., his executors, administrators, or assigns, shall think proper: AND IT IS HEREBY AGREED AND DECLARED, that the said C. D., his executors, administrators, or assigns, shall, with and out of the moneys to arise from any such sale as aforesaid, in the first place pay and retain the costs and expenses attending such sale, or otherwise incurred in relation to this security, and in the next place pay and satisfy the moneys which shall then be owing upon the security of these presents, and shall pay the surplus (if any) to the said A. B., his heirs or assigns (f): PROVIDED ALWAYS, and it is hereby agreed and declared, that the power of sale hereinbefore contained shall not be exercised unless default shall be made in payment of the said principal sum of £—, or the interest thereof, or some part thereof respectively, on the said — day of —, and also for the space of three calendar months next after a notice in writing requiring such payment shall by or on behalf of the said C. D., his executors, administrators, or assigns, have been given to, or left at the usual or last known place of abode, in England or Wales, of the said A. B., or one of his executors or administrators, or left upon or affixed to some part of the land hereby conveyed, or some building thereon, or

OF FREEHOLDS,
WITH EXPRESS
POWER OF
SALE.

Declaration
of trusts of
purchase-
money.

Power to be
exercised only
in case of
default in
payment after
notice, or of
interest being
in arrear.

(f) The surplus moneys should be limited to the mortgagor, his heirs, or assigns, because it is no part of a mortgage unnecessarily to deprive the lands of their character as real estate. If a sale under the power takes place after the death of the mortgagor, his heir, or his devisee of the land, would be entitled to the surplus proceeds, and the effect would be the same, although they may be directed by the mortgage deed to be paid to the mortgagor, his executors, administrators, and assigns. (*In re Clark's Trust*, 22 L. J. Ch. 230; *Wright v. Rose*, 2 Sim. & Stu. 323; *Hardy v. Felton*, 14 L. T. 346; *Bourne v. Bourne*, 2 Hare, 35; see and consider *In re Underwood*, 3 K. & J. 745.)

Surplus
moneys.

OF FREEHOLDS,
WITH EXPRESS
POWER OF
SALE.

Purchaser not
bound to in-
quire as to
default, &c.

Power may be
exercised by
any person
entitled to give
a discharge
for mortgage
money.

unless default shall be made in some half-yearly payment of interest, or some part thereof, for the space of two calendar months after the time hereby appointed for such payment:

PROVIDED ALSO, and it is hereby declared that no purchaser upon any sale under the power hereinbefore contained, shall be bound or concerned to see or inquire whether any such default has been made, or whether any such notice has been given, or left or affixed as aforesaid, or otherwise as to the necessity or propriety of such sale, or be affected by notice that no such default has been made, or notice given or left or affixed as aforesaid, or that the sale is otherwise unnecessary or improper:

AND IT IS HEREBY DECLARED, that the power of sale hereinbefore contained, may be exercised by any person or persons for the time being entitled to receive and give a discharge for the money owing upon the security of these presents. (*Declaration as to leasing power, if desired, supra, p. 532.*)

IN WITNESS, &c.

No. VII.

COPYHOLDS.

MORTGAGE of COPYHOLDS.

Parties.

Covenant to
pay principal
and interest;

to surrender
copyhold
parcels to
mortgagee,
subject to
condition

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*mortgagor*), of the one part, and C. D., of, &c. (*mortgagee*), of the other part, WITNESSETH, that in consideration of the sum of £— paid to the said A. B. by the said C. D., on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges), the said A. B. hereby covenants &c. (*Covenant to pay principal and interest, supra, p. 531*): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid the said A. B., as beneficial owner, hereby covenants with the said C. D. that he the said A. B. will forthwith at his own cost surrender, or cause to be surrendered, into the hands of the lord of the manor of —, according to the custom of the said manor, ALL, &c. (*copyhold parcels*): To the use of the said C. D. in customary fee

simple, according to the custom of the said manor, by and under the rents, suits, and services therefor due and of right accustomed, subject nevertheless to a condition for making void the said surrender if the said sum of £—— with interest thereon shall be paid according to the foregoing covenant in that behalf. *(Add covenant for insurance and declaration as to leasing power when applicable, supra, p. 532.)*

COPYHOLDS.

for making
void the
surrender on
payment on a
day named.

IN WITNESS, &c.

No. VIII.

CONDITIONAL SURRENDER of COPYHOLDS.

CONDITIONAL
SURRENDER.

THE MANOR of —— } BE IT REMEMBERED, that on this
in the County of —— } —— day of ——, A. B., of, &c. (*mort-*
gagor), comes before L. M., of, &c., steward of the said manor,
out of Court, and in consideration of the sum of £—— to the
said A. B. paid by C. D., of, &c. (*mortgagee*), surrenders into the
hands of the lord of the said manor, by the hands and accept-
ance of his said steward, according to the custom of the said
manor, ALL, &c. (*here describe the copyhold parcels*), (To which
premises the said A. B. was admitted tenant at a general Court
held for the said manor on the —— day of ——): TO THE USE
of the said C. D., and his heirs (*g*), at the will of the lord,
according to the custom of the said manor, by and under the
rents, suits, and services therefor due and of right accustomed:
SUBJECT NEVERTHELESS TO THIS CONDITION, that if the said
A. B., his heirs, executors, or administrators, shall on the ——
day of —— next pay to the said C. D., his executors, ad-
ministrators, or assigns, the sum of £——, with interest for the
same after the rate of £—— per centum per annum, to be com-
puted from the date of this surrender (being the same principal
sum and interest as are secured by the covenant of the said A.B.
contained in an indenture bearing even date herewith), then and

Surrender of
parcelsto mortgagee
in fee

subject to
condition for
making sur-
render void on
payment of
mortgage debt
and interest.

(*g*) Sect. 51 of the Conveyancing Act, 1881, applies only to a *deed*.

CONDITIONAL SURRENDER. in such case this surrender shall be void and of no effect, otherwise the same shall remain in full force and virtue.

This surrender was taken and accepted the day and year above written by me.

Signed L. M. (*Steward*),
Steward of the Manor.

No. IX.

LEASEHOLDS BY DEMISE.

MORTGAGE of a LEASEHOLD MESSUAGE by DEMISE.

Parties.

Recite indenture of lease.

Agreement for loan.

Covenant to pay principal and interest.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*mortgagor*), of the one part, and C. D., of, &c. (*mortgagee*), of the other part: WHEREAS by an indenture of lease dated the — day of —, and made between G. H., of, &c., of the one part, and the said A. B. of the other part; ALL that messuage or tenement, &c. (*parcels as contained in the lease*), were demised unto the said A. B., from the — day of — then last past for the term of — years, at the yearly rent of £—, and subject to the covenants and conditions in the said indenture of lease contained, and on the part of the lessee to be observed and performed, including a covenant to insure the said premises against loss or damage by fire, in the joint names of the lessor and lessee, in the sum of £— at least: AND WHEREAS the said C. D. has agreed at the request of the said A. B. to lend to him the sum of £— upon having the repayment thereof with interest secured to him in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH that in consideration of the sum of £— paid to the said A. B. by the said C. D., on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges) the said A. B. hereby covenants (*Covenant to pay principal and interest, supra*, p. 531): AND THIS INDENTURE ALSO WITNESSETH that for the consideration aforesaid the said A. B., as beneficial owner, hereby demises

unto the said C. D. THE messuage and premises comprised in the hereinbefore recited indenture of lease: To HOLD the same unto the said C. D., for all the residue now unexpired of the said term of — years granted therein by the said indenture of lease (except the last day of the said term): PROVIDED always, that if the said sum of £—, with interest thereon, shall be paid on the — day of — next, according to the foregoing covenant in that behalf, the demise hereby made shall be void: AND the said A. B. hereby covenants with the said C. D., that he the said A. B., his executors, administrators, and assigns, will at all times during the continuance of this security, keep the said messuage and premises insured against loss or damage by fire, in the sum of £— at least, in conformity with the covenant in that behalf contained in the said indenture of lease, and will on demand produce to the said C. D., his executors, administrators, or assigns, the policy of such insurance and the receipt for every premium payable in respect thereof: AND IT IS HEREBY DECLARED, that after any sale of the said premises or any part thereof, under the statutory power of sale, the said A. B., or other the person in whom the premises shall for the time being be vested for the last day of the term granted by the hereinbefore recited indenture of lease, shall stand possessed thereof, In trust for the purchaser, and to be assigned and disposed of as he may direct: AND IT IS HEREBY DECLARED (h), that no lease by the said A. B., his executors, administrators, or assigns of the said premises, or any part thereof, during the continuance of this security shall have effect by force or virtue of section 18 of the Conveyancing and Law of Property Act, 1881, unless the said C. D., his executors, administrators, or assigns, shall consent thereto in writing.

LEASEHOLDS BY
DEMISE.

Demise of
parcels to
mortgagee.

Proviso for
redemption.

Covenant by
mortgagor to
keep premises
insured
according to
covenant in
lease.

After a sale
last day of the
term to be held
in trust for
purchaser.

Power of
leasing con-
ferred by Act
on mortgagor
not to be exer-
cised without
consent.

IN WITNESS, &c.

(h) In a mortgage of a leasehold house this clause will be generally proper. If it is desired to negative the power to grant building leases only, insert "building" before "lease."

No. X.

LEASEHOLDS BY
ASSIGNMENT.

MORTGAGE of LEASEHOLDS by ASSIGNMENT.

Mortgagor
assigns lease-
holds to mort-
gagee.

THIS INDENTURE, &c. (*same as last Precedent to the end of first testatum*): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid the said A. B., as beneficial owner, hereby assigns unto the said C. D., ALL the messuage and premises comprised in the hereinbefore recited indenture of lease: To HOLD the same unto the said C. D. for all the residue now unexpired of the said term of — years granted therein by the said indenture of lease: PROVIDED ALWAYS, that if the said sum of £—, with interest thereon, shall be paid on the said — day of — next, according to the foregoing covenant in that behalf, the said premises shall, at the request and cost of the said A. B., his executors, administrators, or assigns, be reassigned to him or them (*Covenant for insurance and declaration as to leasing power if desired, supra, p. 532*).

Proviso for
redemption.

IN WITNESS, &c.

No. XI.

LEASEHOLDS
WITH POWER
OF SALE.MORTGAGE of a LEASEHOLD MESSUAGE by DEMISE, with
express Power of Sale (i).

Parties.

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c. (*mortgagee*), of the other part: (*Recite lease and agreement for loan as in Precedent No. IX.*): NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—, paid to the said A. B. by the said C. D. on or before the execution of these presents (the receipt whereof the said A. B. hereby

Witnessing
part.

(i) See note at p. 538, *supra*.

acknowledges), the said A. B. hereby covenants, &c. (*same as in Precedent No. IX., down to end of covenant for insurance against fire*): AND IT IS HEREBY AGREED AND DECLARED, that it shall be lawful for the said C. D., his executors, administrators, or assigns, at any time or times, without any further consent on the part of the said A. B., his executors, administrators, or assigns, to sell the messuage and premises hereby demised, or expressed so to be, or any part thereof, either by public auction or private contract, and either with or without special conditions or stipulations relative to title or otherwise, with power to buy in at sales by auction, to rescind contracts for sale, and to resell without being answerable for any loss or diminution in price, and with power also to execute assurances, give effectual receipts for the purchase-money, and do all other acts and things for completing the sale which the said C. D., his executors, administrators, or assigns shall think proper: AND IT IS HEREBY AGREED AND DECLARED, that the said C. D., his executors, administrators, or assigns shall, with and out of the moneys to arise from any such sale as aforesaid, in the first place pay and retain the costs and expenses attending such sale or otherwise incurred in relation to this security, and in the next place pay and satisfy the moneys which shall then be owing upon this security, and shall pay the surplus (if any) to the said A. B., his executors, administrators, or assigns: PROVIDED ALWAYS, and it is hereby agreed and declared, that the power of sale hereinbefore contained shall not be exercised unless default shall be made in payment of the said principal sum of £—— and interest, or some part thereof respectively, on the said —— day of —— next, and also for the space of three calendar months next after a notice in writing requiring payment thereof shall by or on behalf of the said C. D., his executors, administrators, or assigns, have been given to or left at the usual or last known place of abode in England or Wales of the said A. B., or one of his executors or administrators, or left upon or affixed to some part of the premises hereby demised, or unless default shall be made in some half-yearly payment of interest, or some part thereof, for the space of two calendar months after the time hereby appointed for such payment: PROVIDED ALWAYS, and it is hereby declared, that no purchaser at any sale made under the power hereinbefore contained shall be bound or concerned to see or inquire whether

LEASEHOLDS
WITH POWER
OF SALE.

Power of sale.

Trusts of
purchase-
money.

Power only to
be exercised
in case of
default, &c.

Purchaser not
bound to in-
quire as to
default, &c.

**LEASEHOLDS
WITH POWER
OF SALE.**

Power may be exercised by any person entitled to give a discharge for mortgage money.

After a sale last day of the term to be held in trust for purchaser.

any such default has been made, or whether any such notice has been given or left or affixed as aforesaid, or otherwise as to the necessity or propriety of such sale, or be affected by notice that no such default has been made, or notice given or left or affixed as aforesaid, or that the sale is otherwise unnecessary or improper: AND IT IS HEREBY DECLARED, that the said power of sale may be exercised by any person or persons for the time being entitled to receive and give a discharge for the moneys for the time being owing on the security of these presents: AND IT IS HEREBY ALSO DECLARED, that after any sale made under the aforesaid power, the said A. B., his executors, administrators, and assigns, shall stand possessed of the premises sold for the last day of the term granted by the hereinbefore recited indenture of lease, In trust for the purchaser, his executors, administrators, and assigns, and to be assigned and disposed of as he or they may direct. (*Declaration as to leasing power, supra, p. 532.*)

IN WITNESS, &c.

No. XII.

**OF PROPERTY
COMPRISED
IN SEVERAL
LEASES.**

**MORTGAGE of PROPERTY comprised in several LEASES by
ASSIGNMENT. Power to mortgagee to GRANT UNDER-
LEASES.**

Parties.

Mortgagor
assigns parcels

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*mortgagor*), of the one part, and C. D., of, &c. (*mortgagee*), of the other part: (*Recite several leases to A. B.*): NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £— paid to the said A. B. by the said C. D. on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges), the said A. B., &c. (*covenant to pay principal and interest, supra, p. 531*): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid the said A. B., as beneficial owner, hereby assigns unto the said C. D., ALL the lands,

hereditaments, and premises comprised in and demised by the several hereinbefore recited indentures of lease, And all buildings which have been erected on the said lands, or on any part thereof: To HOLD the same unto the said C. D. for all the residue now to come of the said several terms of years granted by the said recited indentures of lease respectively: PROVIDED ALWAYS that if the said sum of £—, with interest thereon, shall be paid on the — day of — next, according to the foregoing covenant in that behalf, the said premises shall, at the request and cost of the said A. B., his executors, administrators, or assigns, be reassigned to him or them; AND THE SAID A. B. hereby covenants with the said C. D. as follows (namely), that he, the said A. B., his executors, administrators, or assigns, will at all times during the continuance of this security, keep the messuages and buildings comprised in this security insured against loss or damage by fire, in conformity with the covenants for insurance contained in the several indentures of lease under which the same are respectively holden as aforesaid, and so that the total amount of such insurance shall not be less than £—, and will duly pay the premiums and other sums of money payable for that purpose, and immediately after every such payment will deliver to the said C. D., his executors, administrators, or assigns the receipt for the same: AND IT IS HEREBY AGREED AND DECLARED that section 18 of the Conveyancing and Law of Property Act, 1881, shall not apply to these presents, but it shall be lawful for the said C. D., his executors, administrators, or assigns, at any time or times after he or they shall have entered into possession or receipt of the rents and profits of the said premises by virtue of these presents, to grant any underlease or underleases thereof, or of any part thereof, for any derivative term or terms of years, and either in possession or reversion, and either with or without taking a premium for the making thereof, and at such yearly or other rents, and subject to such covenants and conditions, and generally upon such terms as he or they shall think proper.

IN WITNESS, &c.

OF PROPERTY
COMPRISED
IN SEVERAL
LEASES.

to mortgagee
for residue of
terms.

Proviso for
redemption.

Covenant by
mortgagor to
keep buildings
insured.

Power to
mortgagee to
grant under-
leases.

No. XIII.

LEASEHOLDS
FOR LIVES.

MORTGAGE of a LEASEHOLD ESTATE for LIVES to TWO MORTGAGEES, who make the advance on a JOINT ACCOUNT, with provisions for renewal (a).

Parties.	THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (<i>mortgagor</i>), of the one part, and C. D. and E. F., of, &c. (<i>mortgagees</i>), of the other part: WHEREAS, &c. (<i>Recite lease by X. Y. to A. B. for lives of L., M., and N.</i>): NOW THIS
Witnessing part.	INDENTURE WITNESSETH, that in consideration of the
Consideration.	sum of £—— paid to the said A. B. by the said C. D. and E. F. on or before the execution of these presents, out of moneys belonging to them on a joint account (<i>the receipt, &c.</i>), the said A. B. covenants, &c. (<i>Covenants to pay principal and interest, supra</i> , p. 536): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid the said A. B., (hereinafter called “the mortgagor”), as beneficial owner, hereby conveys unto the said C. D. and E. F. (hereinafter called “the mortgagees”), ALL THOSE the said several pieces or parcels
Mortgagor conveys parcels.	of ground, messuages, or tenements, buildings, hereditaments, and premises comprised in the hereinbefore recited indenture of lease, which premises are underlet as in the schedule hereto is mentioned, TOGETHER with the rents reserved by the several indentures of underlease mentioned in the said schedule, and the benefit of the covenants therein contained, and on the part of the several under-lessees to be respectively observed and performed: To HOLD the same, subject to the underleases, unto the mortgagees, for the lives of the said L., M., and N., and the lives and life of the survivors and survivor of them, and for all other (if any) the estate and interest of the mortgagor therein (<i>Proviso for redemption and covenant by mortgagor to keep premises</i>
To mortgagees for lives of <i>cestuis que vie</i> .	

When renewable leaseholds are mortgaged, mortgagor should covenant to renew.

(a) When renewable leaseholds are made the subject of mortgage, the mortgage should contain a covenant by the mortgagor to renew, as he could not otherwise be compelled to do so. But the mortgagee may renew even in the absence of an express power to do so, and may hold the renewed lease as a security for the moneys he has expended in effecting the renewal, together with interest on such moneys. (*Lacon and Mertins*, 3 Atk. 4.)

insured against fire, supra, p. 536): AND THE mortgagor hereby covenants with the mortgagees that he the mortgagor will from time to time, during the continuance of this security, on the death of any person or persons for whose life or lives the said premises shall for the time being be held, join and concur with the mortgagees in obtaining a renewal of the subsisting lease for the time being of the said premises for a new life or new lives, as the case may be, to be added to the lives or life which shall be then in being, and so that the said renewed lease shall be vested in the mortgagees, subject to such right or equity of redemption as shall then be subsisting under these presents: AND ALSO will pay the fines, fees, and other expenses of procuring or otherwise attending every such renewal of the said lease: and that if for the space of three calendar months next after the dropping of any life upon which the now subsisting lease or any renewed lease of the said premises is or shall be held, the mortgagor shall not make or concur in such renewal as aforesaid, it shall be lawful for the mortgagees, if they shall think proper, by surrender of the then subsisting lease of the said premises or otherwise, to obtain such renewal of such lease for the time being as aforesaid, subject to such right or equity of redemption as aforesaid, and in such case the mortgagor will immediately thereupon pay and reimburse unto the mortgagees such sum or sums of money as they shall have paid for the fines, fees, or other expenses in or about the procuring or otherwise attending every such renewal, together with interest for the same, at the rate of £5 per cent. per annum, to be computed from the time or respective times of the payment thereof: AND such sum or sums of money shall in the meantime be charged on the said hereditaments and premises in addition to the said principal sum of £—— and the interest thereof. (*Declaration as to leasing power, supra*, p. 537.) AND IT IS DECLARED that the expressions “the mortgagor” and “the mortgagees” include all persons deriving title under them respectively wherever the context admits.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

LEASEHOLDS
FOR LIVES.

Covenant by
mortgagor to
concur in all
acts for
renewal.

That if mort-
gagor make
default mort-
gagee may
renew.

Expenses of
renewal to be
borne by mort-
gagor, and to
be charged on
the premises.

No. XIV.

**FEEHOLDS
AND
COPYHOLDS TO
SEVERAL.**

**MORTGAGE of FREEHOLDS and COPYHOLDS to persons
LENDING on a JOINT ACCOUNT.**

Parties.

Conveyance
of freeholds
subject to
redemption.

Covenant to
surrender
copyholds,

subject to a
condition
corresponding
to proviso for
redemption as
to freeholds.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*mortgagor*), of the one part, and C. D., of, &c., E. F., of, &c., and G. H., of, &c. (*mortgagees*), of the other part: WITNESSETH, that in consideration of the sum of £— paid to the said A. B. by the said C. D., E. F., and G. H., on or before the execution of these presents, out of moneys belonging to them on a joint account (*the receipt, &c.*), the said A. B. hereby covenants, &c. (*Covenant to pay principal and interest, supra* p. 536): AND THIS INDENTURE FURTHER WITNESSETH, that for the consideration aforesaid, the said A. B., as beneficial owner, hereby conveys (*Conveyance of freeholds to C. D., E. F., and G. H., in fee; proviso for redemption, supra*, p. 536): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B., as beneficial owner, hereby covenants with the said C. D., E. F., and G. H., THAT he the said A. B. will forthwith, at his own cost, surrender or cause to be surrendered into the hands of the lord of the manor of —, according to the custom thereof, ALL, &c. (*parcels*): To THE USE of the said C. D., E. F., and G. H., in customary fee simple, according to the custom of the said manor, by and under the rents, heriots, suits, and services therefor due and of right accustomed: SUBJECT NEVERTHELESS TO A CONDITION for making void the same corresponding to the proviso for redemption hereinbefore contained as to the freehold hereditaments hereinbefore conveyed. (*Declaration as to leasing power, if desired, supra*, p. 537.)

IN WITNESS, &c.

No. XV.

MORTGAGE of FREEHOLDS and LEASEHOLDS.

FREEHOLDS
AND
LEASEHOLDS.

THIS INDENTURE, made the — day of —, BETWEEN
A. B., of, &c. (*mortgagor*), of the one part, and C. D., of, &c.
(*mortgagee*), of the other part (*Recite lease to A. B., supra, p. 531*),
WITNESSETH, that in consideration, &c., the said A. B., &c.
(*Covenant by mortgagor to pay principal and interest, supra, p. 531*):
AND THIS INDENTURE FURTHER WITNESSETH,
that for the consideration aforesaid the said A. B., as beneficial
owner, &c. (*Conveyance of freeholds to mortgagee, supra, p. 531*),
subject to the proviso for redemption hereinafter contained: AND
THIS INDENTURE ALSO WITNESSETH, that for the
consideration aforesaid the said A. B., as beneficial owner,
hereby demises (*Demise of leaseholds to C. D. for residue of term,*
wanting the last day, supra, p. 542): Subject to the proviso for
redemption hereinafter contained: PROVIDED ALWAYS, that if
the said sum of £— with interest thereon shall be paid on
the — day of — next, according to the foregoing covenant
in that behalf, then and in such case the freehold premises hereby
conveyed shall, at the request and cost of the said A. B., his
heirs or assigns, be reconveyed to him or them, and the demise
hereby made of the said leasehold premises shall be void
(*After a sale, purchaser to be entitled to last day of term, supra,*
p. 543): [AND IT IS HEREBY DECLARED that no lease made by
the said A. B., his heirs, executors, administrators, or assigns, of
the said premises or any part thereof during the continuance of
this security shall have effect by force or virtue of section 18 of
the Conveyancing and Law of Property Act, 1881, unless the
said C. D., his heirs, executors, administrators, or assigns shall
consent thereto in writing.]

Parties.

Conveyance
of freeholds.

Demise of
leaseholds.

Proviso for
redemption.

Declaration
as to leasing
powers.

IN WITNESS, &c.

No. XVI.

**FREEHOLDS,
COPYHOLDS,
AND
LEASEHOLDS.**

**MORTGAGE of FREEHOLDS and COPYHOLDS, and of
LEASEHOLDS for a long TERM.**

Parties.

**Mortgagor
covenants to
pay principal
and interest.**

**Conveyance
of freeholds.**

**Covenant to
surrender
copyholds.**

**Assignment of
leaseholds**

to mortgagee.

**Proviso for
redemption.**

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*mortgagor*), of the one part, and C. D., of, &c. (*mortgagee*), of the other part, WITNESSETH, that in consideration, &c., the said A. B., &c. (*Covenant by mortgagor to pay principal and interest, supra, p. 531*): AND THIS INDENTURE FURTHER WITNESSETH, that for the consideration aforesaid, &c., the said A. B., as beneficial owner, &c. (*Conveyance of freeholds to C. D., in fee, supra, p. 531*), subject to the proviso for redemption hereinafter contained: AND THIS INDENTURE FURTHER WITNESSETH, that for the consideration aforesaid, the said A. B., as beneficial owner (*Covenant to surrender copyholds to the use of C. D., in fee, supra, p. 540*), subject to a condition for making void the same, corresponding to the proviso for redemption hereinafter contained as to the freehold and leasehold hereditaments hereby conveyed and assigned respectively: AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B., as beneficial owner, hereby assigns unto the said C. D., ALL, &c. (*parcels*), (which hereditaments and premises lastly hereinbefore described were, by an indenture dated, &c., and made, &c., demised unto X. Y., his executors, administrators, and assigns, for the term of 1000 years, and have by virtue of divers assignments and acts in the law become vested in the said A. B. for the residue of the said term): To HOLD the same unto the said C. D. for all the residue now unexpired of the said term of 1000 years, subject to the proviso for redemption hereinafter contained: PROVIDED ALWAYS, that if the said sum of £— with interest thereon shall be paid on the — day of — next, according to the foregoing covenant in that behalf, then and in such case the said freehold and leasehold premises shall, at the request and cost of the said A. B., his heirs, executors, administrators, or assigns, be reconveyed and reassigned to him or them. (*Declaration as to leasing power, if desired, supra, p. 532.*)

IN WITNESS, &c.

No. XVII.

MORTGAGE of FREEHOLDS by APPOINTMENT and CONVEYANCE *in fee*, and PROVISION for PAYMENT of MORTGAGE-MONEY by INSTALMENTS.

TO SECURE A
SUM PAYABLE
BY INSTAL-
MENTS.

THIS INDENTURE, made the — day of —, BETWEEN Parties.

A. B., of, &c. (*mortgagor*), of the one part, and C. D., of, &c. (*mortgagee*), of the other part (*Recite conveyance to uses to bar dower in favour of A. B.*): NOW THIS INDENTURE WIT-

Mortgagor
covenants to
pay principal
and interest.

NESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B., &c. (*Covenant to pay principal and interest, suprà*, p. 531):

AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B., as beneficial owner, in exercise of the power for this purpose given to him by the hereinbefore recited indenture as aforesaid, and of all other powers (if any) him hereunto enabling, hereby appoints and by way of further assurance, conveys unto the said C. D., ALL, &c. (*parcels, —Habendum to mortgagee in fee, proviso for redemption, suprà*, p. 531): PROVIDED ALWAYS, and it is hereby agreed and declared

Mortgagor
appoints and
conveys to
mortgagee.

that if the said principal sum of £— hereby secured shall be paid by the instalments following (that is to say), the sum of £— on the 31st day of December next, or within thirty days thereafter, and the sum of £— on the 31st day of December in every succeeding year, or within thirty days thereafter, until the whole of the said principal sum shall be paid, and if every half-yearly payment of interest due under these presents shall be paid upon the day hereinbefore appointed for the payment thereof, or within thirty days thereafter [and if the covenant hereinbefore contained for keeping the said premises insured against loss or damage by fire shall be duly observed and performed], then and in such case the said C. D., his executors, administrators, or assigns, shall not nor will require payment of the said principal sum, or any part thereof, otherwise than by such instalments as aforesaid: PROVIDED ALWAYS, and it is hereby agreed and declared, that upon any sale under the statutory power in that behalf, the purchaser shall not be bound or concerned to see or inquire whether any default has been made

Proviso for
payment of
mortgage
money by
instalments.

Purchaser not
bound to in-
quire whether
default has
been made,
&c.

TO SECURE A
SUM PAYABLE
BY INSTAL-
MENTS.

in payment of the said principal sum or any instalment thereof, or any interest thereon, contrary to the proviso last hereinbefore contained, or otherwise as to the necessity or propriety of the sale or be affected by notice that no such default has been made as aforesaid, or that the sale is otherwise unnecessary or improper. (*Declaration as to leasing power, if desired, supra, p. 532.*)

IN WITNESS, &c.

No. XVIII.

MORTGAGE IN
EXERCISE OF
POWER.

MORTGAGE of LAND in EXERCISE of a general Power of APPOINTMENT.

Parties.

Recite mort-
gage to such
uses as mort-
gagor should
appoint.

Appointment
of parcels to
mortgagees.

Proviso for
redemption.

Declaration as
to order of
liability of
mortgagor and
mortgaged
property.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*mortgagor*), of the one part, and C. D., of, &c. (*mortgagee*), of the other part (*Recite conveyance to mortgagor to such uses as he might by deed appoint, and subject thereto to uses in strict settlement*): NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), THE said A. B., &c. (*Covenant to pay principal and interest, supra, p. 531*): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid the said A. B., as beneficial owner, in exercise of the power for this purpose given to him by the hereinbefore recited indenture as aforesaid, and of all other powers (if any) him hereunto enabling, hereby appoints that ALL, &c. (*parcels*), shall go, remain, and be to the use of the said C. D. in fee simple: PROVIDED ALWAYS, that if the said sum of £—, with interest thereon, shall be paid on the — day of — next, according to the foregoing covenant in that behalf, the appointment hereby made shall be void: PROVIDED ALWAYS, and it is hereby declared that as between the said A. B. and the hereditaments and premises hereby appointed, the said hereditaments and premises shall be the primary security for the principal sum hereby secured, and the interest thereof, But this proviso shall not affect the said C. D., or his right to resort to his several securities in such order and manner as he may think fit.

IN WITNESS, &c.

No. XIX.

MORTGAGE in FEE by HUSBAND and WIFE married BY A MARRIED WOMAN.
before the 1st of January, 1883, of FREEHOLDS belonging
to WIFE, and not being her SEPARATE PROPERTY.

THIS INDENTURE, made the — day of —, BETWEEN Parties.
 A. B., of, &c., and C. his wife (*mortgagor*), of the one part, and
 E. F., of, &c. (*mortgagee*), of the other part (*Recite death of X. Y., Recite title of*
father of C. B., in 1880, intestate, leaving C. B. his heiress-at-law, female mort-
and that X. Y. was at his death seised in fee simple of the gagor.
hereditaments hereinafter described and intended to be hereby con-
veyed): AND WHEREAS the said E. F. has agreed to lend to Agreement
 the said A. B. and C., his wife, the sum of £—, upon for loan.
 having the repayment thereof, with interest, secured to him
 in the manner hereinafter expressed: NOW THIS INDEN- Witnessing
 TURE WITNESSETH, that in consideration of the sum part.
 of £— to the said A. B. and C., his wife, paid by the Consideration.
 said E. F. on or before the execution of these presents (*the*
receipt, &c.), THE said A. B. and C., his wife, as beneficial Husband and
 owners, do by this deed, which is intended to be acknow- wife
 ledged by the said C. B. pursuant to the statute in that
 behalf, convey unto the said E. F.: ALL, &c. (*parcels—*
Habendum to E. F. in fee): PROVIDED ALWAYS, that if the convey parcels
 said A. B. and C., his wife, or either of them, or any per- to mortgagee
 son claiming under them or either of them, shall, on the — in fee.
 day of — next, pay to the said E. F. the sum of £—, with Proviso for
 interest for the same, after the rate of £— per cent. per redemption.
 annum, computed from the date of these presents, then and in
 such case the said hereditaments and premises shall, at the
 request and cost of the person or persons making such payment,
 be re-conveyed unto and to the use of the said C. B., in fee
 simple: AND by way of further security the said A. B. hereby Covenant by
 covenants with the said E. F. to pay to him the said sum of husband for
 £—, with interest thereon, as aforesaid, on the said — day payment of
 of — next, and also so long after that day as any principal principal and
 money remains due under these presents, to pay to him interest interest.
 thereon after the same rate by equal half-yearly payments on

BY A MARRIED WOMAN. the — day of —, and the — day of —: PROVIDED ALWAYS, and it is hereby declared by the said A. B. and C., his wife, that as between the said A. B., and the hereditaments and premises hereby conveyed, the said hereditaments and premises shall be the primary security for the principal sum and interest hereby secured: But this proviso shall not affect the said E. F., or his right to resort to his several securities in such order and manner as he may think fit (a). (*Declaration as to leasing power, if desired, supra, p. 532.*)

Proviso that the mortgaged property shall be the primary security.

IN WITNESS, &c.

No. XX.

MORTGAGE
BY HUSBAND OF
WIFE'S
LEASEHOLDS.

MORTGAGE by HUSBAND of his WIFE'S LEASEHOLDS,
the same having been ACQUIRED by her, and her
MARRIAGE *having taken place, BEFORE the 1st of*
JANUARY, 1883.

Parties.

Recite lease
for 10,000
years at
nominal rent.

Marriage of
lessee with
mortgagor
before 1883.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*mortgagor*), of the one part, and C. D., of, &c. (*mortgagee*), of the other part: WHEREAS by an indenture dated the — day of —, 1880, and made between G. H., Esq., of the one part, and E. F., spinster, of the other part, ALL that piece of land (*here describe the property*), and a messuage or dwelling-house and other buildings which have been erected thereon, were demised by the said G. H., unto the said E. F. for the term of 10,000 years thenceforth next ensuing at a peppercorn rent, and subject to certain lessees' covenants as to user: AND WHEREAS the said A. B. intermarried with the said E. F. on the — day of —, 1882: AND WHEREAS the said C. D. has agreed, at the request of the said A. B., to

(a) If, however, the intention is that the husband shall be primarily liable, the proviso will be as follows:—"Provided always, and it is hereby declared by the said A. B., and C., his wife, that as between, &c., the said A. B. shall be primarily liable to the payment of the said principal sum and interest hereby secured: but this proviso, &c."

lend to him the sum of £—— upon having the repayment thereof, with interest, secured to him in manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— paid to the said A. B. by the said C. D. on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges), the said A. B. hereby covenants (*Covenant by A. B. to pay principal money and interest, supra*, p. 531): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid the said A. B., as beneficial owner, hereby assigns unto the said C. D. THE PIECE of ground, messuage, or dwelling-house, buildings and premises comprised in and demised by the said recited indenture, To HOLD the same unto the said E. F., for all the residue now unexpired of the said term of 10,000 years: PROVIDED ALWAYS that if the said sum of £—— with interest thereon shall be paid on the said —— day of —— next, according to the foregoing covenant in that behalf, the aforesaid assignment shall be void. (*Covenant by the said A. B. for insurance against fire, supra*, p. 532.) PROVIDED ALWAYS, that as between the general estate of the said A. B. and the leasehold premises hereby assigned, the said leasehold premises shall be the primary fund for the payment of the said principal money and interest (*Declaration as to leasing power, supra*, p. 532).

IN WITNESS, &c.

MORTGAGE
BY HUSBAND OF
WIFE'S
LEASEHOLDS.

Agreement for
loan.

Consideration.

Mortgagor
covenants to
pay principal
and interest.

Mortgagor
assigns lease-
holds of his
wife.

Proviso for
redemption.

Declaration
that leaseholds
shall be pri-
mary fund.

No. XXI.

MORTGAGE by MARRIED WOMAN of FREEHOLDS or COPYHOLDS or LEASEHOLDS, being her SEPARATE PROPERTY under the MARRIED WOMEN'S PROPERTY ACT, 1882 (b).

MORTGAGE BY
WIFE OF
SEPARATE PRO-
PERTY UNDER
MARRIED
WOMEN'S
PROPERTY ACT,
1882.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., the wife of E. B., of, &c., to whom she was married

Parties.

(b) See *supra*, p. 556; and also Dissertation on Husband and Wife in Vol. II.

MORTGAGE BY
WIFE OF
SEPARATE PRO-
PERTY UNDER
MARRIED
WOMEN'S
PROPERTY ACT,
1882.

since the 31st day of December, 1882 (c) (*mortgagor*), of the one part, and C. D., of, &c. (*mortgagee*), of the other part (d): WITNESSETH, &c. (*The rest of the deed will be in the same form as Precedent No. I., supra, p. 531, as to freeholds; or No. VII., supra, p. 540, as to copyholds; or No. IX., supra, p. 542, as to leaseholds, substituting "she" for "he," and "her" for "him," when necessary.*)

IN WITNESS, &c.

No. XXII.

MORTGAGE of an EQUITY of REDEMPTION.

OF EQUITY OF
REDEMPTION.

Parties.

Recite first
mortgage.

That principal
sum remains
due on first
mortgage.

Agreement
for loan.

Witnessing
part.

Mortgage by
married
woman mar-
ried before
1882, the pro-
perty acquired
after that date.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*mortgagor*), of the one part, and C. D., of, &c. (*mortgagee*), of the other part: WHEREAS by an indenture dated the — day of —, and made between the said A. B. of the one part, and G. H., of, &c., of the other part, the hereditaments hereinafter described were conveyed by the said A. B. unto and to the use of the said G. H. in fee simple, subject to a proviso therein contained for the redemption of the said hereditaments on payment by the said A. B. to the said G. H. of the sum of £500, with interest thereon, as therein mentioned: AND WHEREAS the said principal sum of £500 still remains owing to the said G. H. upon the said recited security, with interest thereon from the — day of — last: AND WHEREAS the said C. D. hath agreed to lend to the said A. B. the sum of £— upon having the repayment thereof with interest secured to him in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt*,

(c) If the marriage was before the 1st of January, 1883, and the property was acquired after that date, so as to come within the Married Women's Property Act, 1882, the date of the marriage will be omitted in the description of the mortgagor, and recitals will be introduced showing the acquisition of the property since the 31st of December, 1882.

(d) If the property is leasehold, the lease and agreement for loan since the 31st of December, 1882, will be recited as in Precedent No. IX., *supra*, p. 542.

&c.), the said A. B. (*Covenant to pay principal money and interest, suprà, p. 531*): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid the said A. B., as beneficial owner, hereby conveys unto the said C. D. ALL, &c. (*Parcels—Habendum to C. D., in fee*), subject to the hereinbefore recited indenture and the principal sum and interest thereby secured as aforesaid, and subject also to the following proviso, namely (*Proviso for redemption and declaration as to leasing power, if desired, suprà, pp. 531, 532*).

IN WITNESS, &c.

OF EQUITY OF
REDEMPTION.

Mortgagor
conveys par-
cels to mort-
gagee subject
to first mort-
gage.

No. XXIII.

MORTGAGE of an EQUITY of REDEMPTION, where there have been several PRIOR MORTGAGES.

OF EQUITY OF
REDEMPTION
WHERE THERE
ARE PRIOR
MORTGAGES.

THIS INDENTURE, made the — day of —, 18—, BETWEEN A. B., of, &c. (*mortgagor*), of the one part, and C. D., of, &c. (*mortgagee*), of the other part: WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B., &c. (*Covenant to pay principal and interest, suprà, p. 531*): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B., as beneficial owner, hereby conveys unto the said C. D., ALL, &c. (*parcels*): To HOLD the same unto and to the use of the said C. D. in fee simple, SUBJECT to the prior mortgages mentioned in the schedule hereto, and subject also to the following proviso, namely: (*Proviso for redemption and other clauses as in No. I., suprà, pp. 531, 532.*)

Parties.

Conveyance
of parcels to
mortgagee
subject to
prior mort-
gages.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

An indenture dated, &c., and made, &c. (*date and parties*), being a mortgage for the sum of £— and interest.

An indenture, &c.

(*Dates, parties, and short particulars of other mortgages.*)

No. XXIV.

OF FREEHOLDS
AND LEASE-
HOLDS BY
TENANTS IN
COMMON.

MORTGAGE of FREEHOLDS and LEASEHOLDS by TENANTS
in COMMON.

Parties.

Recite will
of G. H.,
whereby free-
holds and
leaseholds are
devised and
bequeathed to
A. B. and C. D.
in equal
shares.

That lease-
holds are held
for residue of
10,000 years
term.

Agreement
for mortgage.

Covenant by
mortgagor to
pay principal
and interest.

A. B. as to one
moiety and
C. D. as to
other moiety,
convey free-
holds to mort-
gagee in fee,
and leaseholds
to mortgagee
for residue of
10,000 years
term.
Proviso for
redemption.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c., and C. D., of, &c. (*mortgagors*), of the one part, and E. F., of, &c. (*mortgagee*), of the other part: WHEREAS G. H., late of, &c., made his will dated the — day of —, and thereby he devised and bequeathed the freehold and leasehold hereditaments hereinafter described, and all his interest therein respectively, unto and to the use of the said A. B. and C. D., their heirs, executors, administrators, and assigns, in equal shares, as tenants in common, and not as joint tenants. (*Death of testator and probate of his will.*) AND WHEREAS the said leasehold hereditaments and premises were at the decease of the said testator held by him for the then unexpired residue of a term of 10,000 years, created by an indenture dated, &c., and made, &c., at a peppercorn rent, and subject to certain covenants on the part of the lessee as to user, as in the said indenture is mentioned: AND WHEREAS the said E. F. has agreed, upon the request of the said A. B. and C. D., to lend to them the sum of £400, upon having the repayment thereof with interest secured to him in manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £400 to the said A. B. and C. D. paid by the said E. F., on or before the execution of these presents (the receipt whereof the said A. B. and C. D. hereby acknowledge), the said A. B. and C. D. hereby jointly and severally covenant with the said E. F. (*covenant to pay principal and interest, supra, p. 531*): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B. and C. D., as beneficial owners, hereby respectively convey and assign unto the said E. F., First, ALL, &c. (*freehold parcels*), Secondly, ALL, &c. (*leasehold premises*), To HOLD the same unto the said E. F. as to the said freehold hereditaments in fee simple, and as to the said leasehold hereditaments for all the residue now unexpired of the said term of 10,000 years created therein as aforesaid: PROVIDED ALWAYS, that if the said

sum of £——, with interest thereon, shall be paid on the —— day of —— next, according to the foregoing covenant in that behalf, the said freehold and leasehold hereditaments shall, at the request and cost of the said A. B. and C. D., their heirs, executors, administrators, or assigns, be reconveyed and reassigned to them as tenants in common, or as they shall direct: AND the said A. B. and C. D. hereby jointly and severally covenant with the said E. F., that they the said A. B. and C. D., their heirs, executors, administrators, or assigns, will (*covenant for insurance against fire, suprd, p. 532*): AND IT IS HEREBY DECLARED that no lease made by the said A. B. and C. D., their heirs, executors, administrators, or assigns, or any of them, during the continuance of this security, shall have effect by force or virtue of section 18 of the Conveyancing and Law of Property Act, 1881, unless the said E. F., his executors, administrators, or assigns, shall consent thereto in writing.

IN WITNESS, &c.

OF FREEHOLDS
AND LEASE-
HOLDS BY
TENANTS IN
COMMON.

Covenant by
mortgagors to
insure against
fire.

Declaration
that no lease
shall have
effect under
Conveyancing
Act, 1881,
without con-
sent of mort-
gagee.

No. XXV.

MORTGAGE *with the CONCURRENCE of a PRIOR MORTGAGEE, who POSTPONES his MORTGAGE.*

MORTGAGE
WITH CON-
CURRENCE OF
PRIOR
MORTGAGEE.

THIS INDENTURE, made the —— day of ——, BETWEEN E. F., of, &c. (*prior mortgagee*), of the one part, A. B., of, &c. (*mortgagor*), of the second part, and C. D., of, &c. (*mortgagee*), of the third part (*recite mortgage in fee from A. B. to E. F. to secure £1,000,—that principal sum still remains due*): AND WHEREAS the said A. B. hath applied to and requested the said C. D. to lend to him the sum of £2,000, which the said C. D. hath agreed to do, upon having the repayment thereof with interest secured to him in the manner hereinafter expressed: AND WHEREAS the said E. F. hath agreed to postpone his aforesaid security to the security intended to be hereby made in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £2,000 paid to the said A. B.

Parties.

Recite prior
mortgage.
Agreement
for mortgage.

Agreement by
prior mort-
gagee to post-
pone his
security.
Witnessing
part.

**MORTGAGE
WITH CON-
CURRENCE OF
PRIOR
MORTGAGE.**

Prior mort-
gagee and
mortgagor
convey to
mortgagee.

Proviso for
redemption.

Declaration
that, subject
to this secu-
rity, former
mortgage shall
remain in full
force.

Acknowledg-
ment by mort-
gagee as to
production of
certain deeds
and delivery
of copies
thereof.

by the said C. D. on or before the execution of these presents (*the receipt, &c.*), the said A. B., &c. (*covenant to pay principal money and interest, supra*, p. 531): **AND THIS INDENTURE ALSO WITNESSETH**, that for the consideration aforesaid, the said E. F., as mortgagee, at the request of the said A. B., hereby conveys, and the said A. B., as beneficial owner, hereby conveys and confirms unto the said C. D., **ALL, &c. (*parcels, &c.*)**: To hold the same unto and to the use of the said C. D. in fee simple: **PROVIDED ALWAYS**, that if the said sum of £2,000, with interest thereon, shall be paid on the — day of — next, according to the foregoing covenant in that behalf, then and in such case the said freehold hereditaments shall, at the cost of the said A. B., his heirs or assigns, be reconveyed to the use of the said E. F. in fee simple, subject to such right or equity of redemption as shall be subsisting therein under or by virtue of the hereinbefore recited indenture: **AND IT IS HEREBY AGREED AND DECLARED** between and by the said A. B. and E. F. that, subject to the security hereby made, the hereinbefore recited indenture of mortgage, and all powers and provisions therein contained, shall remain in full force (*declaration as to leasing power, if desired, supra*, p. 532, adding after the words, "C. D., his executors, administrators, or assigns," the words, "or the said E. F., his executors, administrators, or assigns"): **AND** the said E. F. hereby acknowledges the right of the said C. D. to production and delivery of copies of the hereinbefore recited indenture of mortgage: **AND** the said C. D. hereby acknowledges the right of the said E. F. to production and delivery of copies of these presents, and of the documents of title specified in the schedule hereto (which documents have been delivered to him the said C. D., as he doth hereby declare) (*e*).

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

(*e*) It is supposed in this case that E. F. retains his mortgage deed, but that all the other title deeds are handed over to C. D.

No. XXVI.

MORTGAGE of LEASEHOLDS by EXECUTORS.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c., and C. D., of, &c. (*mortgagors*), of the one part, and E. F., of, &c. (*mortgagee*), of the other part (*recite lease from G. H. to X. Y.;—will of X. Y. appointing A. B. and C. D. executors;—death of X. Y. and probate of his will*): AND WHEREAS the said A. B. and C. D., as such executors as aforesaid, having occasion for the sum of £200, have requested the said E. F. to lend to them such sum, which he the said E. F. has agreed to do, on having the repayment thereof, with interest, secured to him in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £200 paid to the said A. B. and C. D. by the said E. F. on or before the execution of these presents (the receipt whereof the said A. B. and C. D. hereby acknowledge), they the said A. B. and C. D., as personal representatives of the said X. Y. deceased, hereby demise unto the said E. F., ALL the hereditaments and premises comprised in and demised by the hereinbefore recited indenture of lease: To HOLD the same unto the said E. F., for all the residue now unexpired of the said term of — years granted therein by the said indenture of lease as aforesaid (except the last day of the said term): PROVIDED ALWAYS, that if any person or persons interested in the said premises under the said will of the said X. Y., shall, on the — day of — next, pay to the said E. F. the sum of £200, with interest thereon at the rate of £— per cent. per annum, computed from the date of these presents, then and in such case the demise hereby made shall be void: AND IT IS HEREBY DECLARED (but not so as to create any personal liability on the part of the said A. B. and C. D., or either of them), that if the said sum of £— shall not be paid on the said — day of — next, interest thereon after the rate aforesaid shall continue to be paid to the said E. F., by equal half-yearly payments, on the — day of — and the — day of — in every year, until the said sum of £— shall be fully paid: AND FURTHER, that the buildings on

MORTGAGE OF
LEASEHOLDS
BY EXECUTORS.

Parties.

Agreement
for loan.Witnessing
part.
Consideration.Executors
demise lease-
holdsto mortgagee
for residue of
term, except
last day.Proviso for
redemption.Declaration
that interest
shall be paid
half-yearly.

And that

**MORTGAGE OF
LEASEHOLDS
BY EXECUTORS.**buildings shall
be insured.After sale, last
day of term to
be held in trust
for purchaser.

the said premises hereby demised shall, at all times during the continuance of this security, be kept insured against loss or damage by fire in the sum of £—— at least: AND IT IS HEREBY ALSO DECLARED, that after any sale made under the statutory power in that behalf, the said A. B. and C. D., or other the person or persons in whom the said term of —— years granted by the said indenture of lease shall for the time being be vested, shall stand possessed of the premises sold for the last day of the said term, In trust for the purchaser, and to be assigned and disposed of as he may direct. (*Declaration as to leasing power, if desired, supra, p. 532.*)

IN WITNESS, &c.

No. XXVII.

**POLICY
OF ASSURANCE.****MORTGAGE of a POLICY of ASSURANCE effected in the
NAME of the MORTGAGOR (a).**

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*mortgagor*), of the one part, and C. D., of, &c. (*mortgagee*), of the other part: WITNESSETH, that in consideration, &c., the said A. B., &c. (*Covenant to pay principal and interest, supra, p. 531*): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B., as beneficial owner, hereby assigns unto the said C. D. ALL THAT policy of assurance, under the hands of three of the directors of the —— Assurance Society, dated the —— day of ——, and numbered ——, whereby the sum of £—— is assured to be paid to the executors, administrators, or assigns of the said A. B. within three calendar months after proof of his death, subject to the annual premium of £——, and the moneys assured by and to become payable thereunder: To HOLD the same unto the said C. D.: PROVIDED ALWAYS, that if the said

Mortgagor
assigns policyto mortgagee.
Proviso for
redemption.

(a) Notice of this mortgage should be given to the assurance office as soon as the deed is executed.

sum of £——, with interest thereon, shall be paid on the —— day of —— next, according to the foregoing covenant in that behalf, the said policy shall be reassigned unto the said A. B. at his cost (b): AND the said A. B. hereby covenants with the said C. D. that he the said A. B. will not do any act or commit any default whereby the said policy of assurance may be rendered void or voidable, and if the said policy, or any new policy to be effected as hereinafter mentioned, shall by any means become void, will forthwith at his own cost effect a new policy on his life in lieu of such void policy, in the name or names of the said C. D., his executors, administrators, or assigns, in some office to be approved of by him or them, in the sum of £—— at least, such new policy to be subject to the like right of redemption as the policy hereby assigned, and will duly and regularly pay all premiums and other sums of money (if any) which shall from time to time become payable for keeping on foot the said policy hereby assigned, and every or any such new policy as aforesaid, and will deliver to the said C. D., his executors, administrators, or assigns, the receipt for every such premium within seven days after the same shall become due: AND that the said C. D., his executors, administrators, or assigns, may keep on foot the said policy hereby assigned, or effect or keep on foot any such new policy as aforesaid (as the case may require) in the event of the said A. B. omitting to do so, and that all moneys paid by him or them for that purpose, with interest for the same after the rate of £5 per cent. per annum, computed from the time or respective times of paying or advancing the same, shall be repaid by the said A. B. on demand, and shall in the meantime be charged on the policy of assurance and premises for the time being subject to this security, in addition to the said principal sum of £—— hereby originally secured, and the interest thereof (c): AND IT IS HEREBY DECLARED that under the statutory power of sale the said policy hereby assigned, or any substituted policy, may be sold either to the assurance society by which the same

POLICY OF
ASSURANCE.

Covenant by
mortgagor
not to vitiate
policy,

and to pay
premiums,

and to deliver
receipts.
If mortgagor
makes default
mortgagee
may keep up
policy.

Security to
include moneys
advanced by
mortgagee for
insurance.
Policy may be
sold under
power to
assurance
office or
otherwise.

(b) See sect. 22 of the Conveyancing Act, 1881, in the Appendix.

(c) In the absence of any express provision a mortgagee is entitled to charge the property with any sums he may advance for keeping up the policy, and with interest thereon at four per cent. (*Bellamy v. Brickenden*, 2 J. & H. 137; *Gill v. Downing*, 17 L. R. Eq. 316; *Leslie v. French*, 23 Ch. D. 352.)

Mortgagee
should be
authorized to
keep up policy.

**POLICY
OF ASSURANCE.**

Statutory
power of sale
may be exer-
cised without
notice.

has been or shall be granted, or to any other person or persons, company or companies: [AND IT IS HEREBY ALSO DECLARED that the statutory power of sale may be exercised at any time after the said — day of — next, without its being necessary to give to the said A. B. any notice requiring payment of the mortgage money in like manner as if section 20 of the Conveyancing and Law of Property Act, 1881, had been omitted from the said Act (c).]

IN WITNESS, &c.

No. XXVIII.

**POLICY
OF ASSURANCE
WHERE
SURETIES JOIN.**

**MORTGAGE of a POLICY of ASSURANCE effected in the
NAME of the MORTGAGEE. TWO SURETIES join in the
SECURITY (d).**

Parties.

THIS INDENTURE, made the — day of —, BETWEEN
A. B., of, &c. (*mortgagor*), of the first part, C. D., of, &c., and

Liability of
surety.

(c) This clause will be inserted only where thought necessary.

(d) Where a person joins as surety it is necessary that he should be made acquainted with all the circumstances and facts which bear upon or can affect his position, for if he is kept in ignorance of anything which might have influenced him in undertaking the obligation, the creditor will have no remedy against him; and in order to preserve his obligation, care must be taken in all subsequent transactions between the principal debtor and the creditor that no arrangement is made between them either as to the payment of the debt or the securities which can prejudicially affect the surety's position. Thus, if further time is given by the creditor to the principal debtor for the payment of the debt without the surety's consent, and without reserving a right to proceed against the surety (*Samuell v. Howarth*, 3 Mer. 272; *Oriental Financial Corporation v. Overend & Co.*, L. R. 7 Ch. 142), or if the creditor without the consent of the surety compounds with the principal debtor or releases him from payment of the debt (*Webb v. Hewitt*, 3 K. & J. 438; *Nicholson v. Revill*, 4 Ad. & El. 675; *Taylor v. Manners*, L. R. 1 C. A. 48), the surety will be discharged (see *Tudor's L. C. in Equity*, p. 980, 4th ed.); but it seems that a covenant not to sue the principal debtor, subject to a proviso that the creditor should not be prevented from suing any other person than the principal debtor who might be liable to pay the money, does not discharge the surety. (*Price v. Barker*, 24 L. J. N. S. Q. B. p. 130; *Green v. Winn*, L. R. 4 C. A. 204.) The surety will not, however, be released from his obligations if his remedies are not affected by the arrangement between the creditor and the principal debtor (*Hulme v. Coles*, 2 Sim. 12), or if

E. F., of, &c. (*sureties*), of the second part, and G. H., of, &c. (*mortgagee*), of the third part: WHEREAS the said A. B., and also the said C. D. and E. F., have requested the said G. H. to lend to the said A. B. the sum of £——, which the said G. H. has agreed to do upon having the repayment thereof with interest secured to him in the manner hereinafter expressed: AND WHEREAS it was part of the security agreed upon as aforesaid, that the said A. B. should effect an assurance on his life in the name of the said G. H. in the sum of £——, and accordingly by a policy of assurance under the hands of three of the directors of the — Assurance Company, dated —, and numbered —, the sum of £—— is assured to be paid to the said G. H., his executors, administrators, or assigns, within three calendar months after proof of the decease of the said A. B., subject to the payment of an annual premium of £——: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), THE SAID A. B., C. D. and E. F. hereby jointly and severally covenant with the said G. H. to pay to him on the — day of — next, the sum of £ ——, with interest thereon in the meantime after the rate of £—— per cent. per annum, computed from the date of these presents: AND ALSO so long after that day as any principal money remains due on this mortgage, to pay to him interest thereon after the rate aforesaid, by equal half-yearly payments on the — day of

POLICY
OF ASSURANCE
WHERE
SURETIES JOIN.

Recite agreement for loan.

Policy of
assurance on
life of mort-
gagor effected
in the name of
the mortgagee.

Witnessing
part.

Joint and
several cove-
nants by
mortgagor and
his sureties to
pay principal
sum and
interest.

further time is given with the consent of the surety, or if the right of the principal debtor to proceed against the surety is clearly reserved (*Boulton v. Stubbins*, 18 Ves. 32; *Webb v. Hewitt*, *ubi supra*), or by the creditor not taking proceedings against the principal debtor for the payment of the debt, or by his taking an additional security or afterwards releasing such further security (*Newton v. Chorlton*, 10 Hare, 646); but the surety would be released if the creditor were to take from the debtor a security in substitution for all or any of the original securities. (Tud. L. C. in Equity, 1091, 4th ed.) It is also to be observed, that if there are two sureties and the creditor releases one, such release operates as a release of the other. (*Nicholson v. Revell*, 4 A. & E. 675; *Evans v. Brembridge*, 2 K. & J. 183.) So, if the mortgage deed is drawn in such a manner that several sureties shall enter into joint and several covenants, the signature of all is necessary in order to affect all or any of them. (*Evans v. Brembridge*, 2 K. & J. 174.) If a surety pays the debt of the principal debtor he is entitled to stand in the place of the creditor as to all his remedies and the benefit of all his securities (whether they be land, specialty, or otherwise) for the payment of his debt. (*Newton v. Chorlton*, *ubi supra*; *Mercantile Law Amendment Act*, 1856 (19 & 20 Vict. c. 97, s. 5).) Under a joint and several suretyship the death of one of the sureties does not by itself determine the liability of the surviving co-surety. (*Beckett & Co. v. Addyman*, 9 Q. B. D. 783.)

POLICY
OF ASSURANCE
WHERE
SURETIES JOIN.

To pay
premiums,

and deliver
receipts to
mortgagees.

Power to
mortgagee to
keep on foot
policy and
effect new
policy in case
of default by
mortgagor.

Sums ex-
pended by
mortgagee in
keeping on
foot or effect-
ing policies,
with interest,
to be repaid.

Declaration
that policy
shall be
charged with
principal
money and
interest and
sums ex-
pended.

Proviso that
forbearance
by mortgagee
shall not put
an end to the
liability of
sureties.

—, and the day of — : AND ALSO to pay all premiums and other sums of money which shall from time to time become payable for keeping on foot the hereinbefore recited policy of assurance, and if the said policy shall become void forthwith to effect a new policy on the life of the said A. B. in lieu of such void policy in the name or names of the said G. H., his executors, administrators, or assigns, in the sum of £—— at least, and to pay all expenses of and incidental to the effecting of any such new policy, and all premiums and other sums of money payable for keeping on foot the same, and also to deliver to the said G. H., his executors, administrators, or assigns, the receipt for every premium payable as aforesaid within seven days after the same premium shall become due : AND THAT it shall be lawful for the said G. H., his executors, administrators or assigns, to keep on foot the hereinbefore recited policy, or to effect and keep on foot any such new policy as aforesaid (as the case may require), in the event of the said A. B. omitting to do so, and in that case all moneys expended by him or them for that purpose, with interest for the same after the rate of £5 per cent. per annum, computed from the time or respective times of paying or advancing the same, shall be repaid to him or them by the said covenanting persons, or some or one of them, on demand : AND IT IS HEREBY AGREED and declared that the hereinbefore recited policy of assurance and every new policy to be effected as aforesaid shall stand charged with the payment to the said G. H., his executors, administrators, or assigns, of the said principal sum of £—— and the interest thereof according to the foregoing covenant in that behalf, and also with the repayment of all moneys which shall be expended by him or them in or about the keeping on foot or effecting any policy as aforesaid, and the interest which shall become due in respect thereof, and subject thereto shall be held in trust for the said A. B. : AND IT IS HEREBY DECLARED, that, &c. (*Policy may be sold under power to assurance society or otherwise. Statutory power of sale may be exercised without notice as in last Precedent, supra*, pp. 565, 566) : PROVIDED ALWAYS, and it is hereby agreed and declared, that any neglect or forbearance of the said G. H., his executors, administrators, or assigns, in endeavouring to obtain payment of the principal moneys and interest intended to be hereby secured, or in putting in force

any of his or their remedies for the same, and any time which may be given by him or them to the said A. B., or to either of them the said C. D. and E. F., shall not in any way prejudice or affect the joint and several covenants hereinbefore contained, or the continuing liability of the covenanting parties or any of them by virtue thereof, any rule of law or equity to the contrary notwithstanding.

IN WITNESS, &c.

POLICY
OF ASSURANCE
WHERE
SURETIES JOIN.

No. XXIX.

MORTGAGE of a LIFE INTEREST IN PERSONALTY and a POLICY of ASSURANCE (e).

LIFE INTEREST
IN PERSONALTY
AND POLICY.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*mortgagor*), of the one part, and C. D., of, &c. (*mortgagee*), of the other part: WHEREAS under or by virtue of an indenture dated, &c., and made, &c., being the settlement made in contemplation of the marriage then intended and shortly afterwards solemnized between the said A. B. and E., now his wife (then E. F.), the said A. B. is entitled to receive during his life the dividends, interest, and annual produce to arise from the trust funds settled by the said indenture, which trust funds now consist of the sum of £—— £2½ per Cent. Consolidated Stock, standing in the names of M. N. and O. P. (the trustees of the said indenture) in the books of the Governor and Company of the Bank of England, and the sum of £—— invested in the names of the same trustees on mortgage of real estates situate in the county of —: AND WHEREAS (*Recite policy of assurance in the name of A. B., supra, p. 564—agreement for mortgage, supra, p. 542*): NOW THIS INDENTURE WITNESSETH, that in consideration, &c., the said A. B., &c. (*Covenant to pay principal money and interest, supra,*

Parties.

Recite settlement under which mortgagor is entitled to a life interest in trust funds.

Policy of assurance on life of mortgagor. Witnessing part.

(e) Notice of this mortgage should be given to the trustees of the recited settlement and to the assurance office as soon as the deed is executed.

**LIFE INTEREST
IN PERSONALTY
AND POLICY.**

Mortgagor
assigns life
interest in
trust funds
and policy to
mortgagees.

Proviso for
redemption.

p. 531): AND THIS INDENTURE ALSO WITNESSETH that, for the consideration aforesaid, the said A. B., as beneficial owner, hereby assigns unto the said C. D., ALL the dividends, interest, and annual produce to arise and become payable during the life of the said A. B., from the said sum of £—— £2½ per Cent. Consolidated Stock, and the said sum of £—— invested on mortgage as aforesaid, or other the trust funds for the time being subject to the said indenture of settlement: AND ALSO the hereinbefore recited policy of assurance, and the moneys assured by and to become payable under the same: To HOLD the same unto the said C. D.: PROVIDED ALWAYS, that if the said sum of £——, with interest thereon, shall be paid on the —— day of —— next, according to the foregoing covenant in that behalf, then and in such case the said premises shall be reassigned unto the said A. B., at his expense, or as he shall direct: AND THE SAID A. B. hereby covenants, &c. (*Covenants as to policy as in Precedent No. XXVII, p. 565, adding in the last clause the words "dividends, interest, and annual produce" before "policy of assurance and premises." Policy may be sold to office or otherwise, and if desired statutory power of sale may be exercised without notice, supra, pp. 565, 566.*)

IN WITNESS, &c.

No. XXX.

**LIFE ESTATE IN
LANDS AND
POLICIES.**

MORTGAGE of a LIFE ESTATE in LANDS and of POLICIES of ASSURANCE to TWO PERSONS subject to a PRIOR MORTGAGE.

Parties.

Recite that
mortgagor is
entitled to life
estate in lands
and to policies
of assurance
on his life,

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*mortgagor*), of the one part, and C. D., of, &c., and E. F., of, &c. (*mortgagees*), of the other part: WHEREAS under the will of ——, dated, &c., the said A. B. is seised for an estate during his life without impeachment of waste of the hereditaments intended to be hereby demised, and the said A. B.

is also possessed of the several policies of assurance on his life intended to be hereby assigned, subject as to the said hereditaments and policies to an indenture dated the — day of —, and made between the said A. B. of the one part, and G. H., of, &c., of the other part, whereby the said hereditaments were demised by the said A. B. unto the said G. H. for the term of ninety-nine years, without impeachment of waste, if he the said A. B. should so long live, and the said policies were assigned by the said A. B. unto the said G. H. by way of mortgage for securing the payment of the principal sum of £—, with interest for the same, and which principal sum still remains due and owing, but all interest for the same has been duly paid up to the — day of — last (*Agreement for loan, supra*, p. 542): NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B., &c. (*Covenant to pay principal money and interest, supra*, p. 536): AND THIS INDENTURE FURTHER WITNESSETH, that for the consideration aforesaid, the said A. B., as beneficial owner, hereby demises unto the said C. D. and E. F. ALL the messuages, lands, tenements, and hereditaments, situate in the parish of —, in the county of —, described in the first schedule hereto: AND ALL other (if any) the messuages, lands, tenements, and hereditaments devised by the said will of the said — To HOLD the same unto the said C. D. and E. F. from the date of these presents, for the term of one hundred years thence next ensuing, if the said A. B. shall so long live, subject to the said indenture of the — day of — and the said principal sum of £— due and owing by virtue thereof as aforesaid and the interest for the same, and subject also to the proviso for redemption hereinafter contained: AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B., as beneficial owner, hereby assigns unto the said C. D. and E. F., THE SEVERAL policies of assurance on the life of the said A. B. described in the second schedule hereto, and the several moneys assured by and to become payable under or by virtue of the said policies respectively: To HOLD the same unto the said C. D. and E. F. subject to the said indenture of the — day of — and the said principal sum of £— due and owing by virtue thereof and the interest for the same, and subject also to the proviso for redemption hereinafter contained:

LIFE ESTATE IN
LANDS AND
POLICIES.

subject to
prior mort-
gage.

Mortgagor
demises lands

to mortgagees
for term of
100 years, if
mortgagor
shall so long
live,
subject to prior
mortgage.

Mortgagor
assigns
policies

to mort-
gagees.

**LIFE ESTATE IN
LANDS AND
POLICIES.**

Proviso for
redemption.

Covenant by
mortgagor not
to vitiate
policies,

and to renew
same if they
become void,

and to pay
premiums,
and to deliver
receipts ;

and in case of
mortgagor's
default, mort-
gagee may
keep up assur-
ance,

and that mort-
gagor will pay
moneys ad-
vanced by
mortgagees for
assurance.

Security to in-
clude moneys
advanced by

PROVIDED ALWAYS, that if the said sum of £—— with interest thereon shall be paid on the —— day of —— next, according to the foregoing covenant in that behalf, then and in such case the said hereditaments, policies, moneys, and premises hereby demised and assigned respectively, shall be respectively surrendered and reassigned unto the said A. B. at his expense : AND the said A. B. hereby covenants with the said C. D. and E. F. that he the said A. B. will not do any act, or commit any default, whereby the said policies of assurance hereby assigned, or any of them, may be rendered void or voidable : AND IN CASE the said policies or any policy or policies to be effected as hereinafter mentioned, shall by any means become void, then will forthwith, at his own cost, effect a new policy or new policies on his life, in lieu of such void policy or policies, in the names of the said C. D. and E. F., their executors, administrators, or assigns, in some office to be approved by them, in a sum or sums not less in amount than the sum or sums assured by the policy or policies which shall have become void as aforesaid (including any bonus or bonuses which may have been declared thereon), and that every such new policy shall be subject to the like right of redemption as the policies of assurances hereby assigned, and will duly and regularly pay the premiums and other sums of money (if any) which shall from time to time become payable for keeping on foot the said policies hereby assigned, or any new policy or policies to be effected as aforesaid, and deliver to the said C. D. and E. F., their executors, administrators, or assigns, the receipt for every such premium within seven days after the same shall become due : AND if default shall be made by the said A. B. in keeping on foot the said policies hereby assigned, or in effecting or keeping on foot any such new policy or policies, then and in such case the said C. D. and E. F., their executors, administrators, or assigns, may keep on foot the said policies, or effect and keep on foot such new policy or policies as aforesaid, as the case may require, if they shall think fit so to do : AND IN THAT CASE all moneys expended by them for that purpose, with interest thereon after the rate of £5 per cent. per annum computed from the time or respective times of paying or advancing the same, shall be repaid by the said A. B. on demand and shall in the meantime be charged on the hereditaments and policies of assurance for the time being subject to this security,

in addition to the said principal sum of £—— and the interest thereof. (*Declaration as to leasing power, if desired, supra, p. 537.*)

IN WITNESS, &c.

LIFE ESTATE IN
LANDS AND
POLICIES.

mortgagee for
assurance.

THE FIRST SCHEDULE ABOVE REFERRED TO.

THE SECOND SCHEDULE ABOVE REFERRED TO.

No. XXXI.

MORTGAGE of FREEHOLDS to secure the re-transfer of Stock, and the Payment in the meantime of such Sums as may be equal to the DIVIDENDS thereof (a).

TO SECURE
RE-TRANSFER
OF STOCK.

THIS INDENTURE, made the —— day of ——, BETWEEN Parties.

A. B., of, &c. (*mortgagor*), of the one part, and C. D., of, &c. (*mortgagee*), of the other part: WHEREAS the said C. D. hath agreed to lend to the said A. B. the sum of £—— (being the proceeds of the sale of the sum of £—— £2½ per Cent. Consolidated Stock, recently standing in the name of the said C. D., in the books of the Governor and Company of the Bank of England), upon having the transfer of a like sum of £—— £2½ per Cent. Consolidated Stock into the name of the said C. D., and the payment in the meantime of an annual sum in lieu of the dividends of the said stock secured to the said C. D. in manner hereinafter mentioned: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— (being the proceeds of the sale of the said sum of £—— £2½ per Cent. Consolidated Stock) paid to the said A. B. by the

Agreement
for advance
of proceeds
of consols.

(a) The provisions relating to mortgages in the Conveyancing Act, 1881, including the statutory power of sale, apply to a mortgage to secure stock, stock being included in the expression "money's worth." (See sect. 2, sub-sect. 6.) Conveyancing Act applies to mortgages to secure stock.

TO SECURE
RE-TRANSFER
OF STOCK.

Covenant by
mortgagor to
transfer stock,
and to pay in
the meantime
sums equal to
dividends.

Proviso for
redemption.

said C. D. on or before the execution of these presents (*the receipt, &c.*) the said A. B. hereby covenants with the said C. D. to transfer, or cause to be transferred, into the name or names of the said C. D., his executors, administrators, or assigns, in the books of the Governor and Company of the Bank of England, on the — day of — next, the sum of £—— £2½ per Cent. Consolidated Stock, and in the meantime, until the said Stock shall be so transferred, to pay unto the said C. D., his executors, administrators, or assigns, such sums of money as shall be equal in amount to the dividends which the said C. D., his executors, administrators, and assigns, would have been entitled to receive on account of the said stock, if the same had continued standing in the name of the said C. D., such payments to be made at such times as the said dividends would have become payable: AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B., as beneficial owner, &c. (*Conveyance to mortgagee in fee*): PROVIDED ALWAYS, that if the covenant of the said A. B. hereinbefore contained shall be duly performed, the said premises shall, at the request and cost of the said A. B., his heirs or assigns, be re-conveyed to him or them. (*Declaration as to leasing power if desired, supra, p. 532.*)

IN WITNESS, &c.

No. XXXII.

TO SECURE
RE-TRANSFER
OF STOCK AND
INTEREST ON
PROCEEDS.

MORTGAGE to secure the RE-TRANSFER of STOCK lent,
and PAYMENT of INTEREST on PROCEEDS in the
MEANTIME.

Parties.

Agreement
for advance.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*mortgagor*), of the one part, and C. D., of, &c. (*mortgagee*), of the other part: WHEREAS the said C. D. hath agreed to sell the sum of £—— £2½ per Cent. Consolidated Stock, belonging to him, and to pay the proceeds of such sale to the said A. B. upon having a transfer of a like sum of £——

£2 $\frac{3}{4}$ per Cent. Consolidated Stock, and the payment in the meantime of interest on the proceeds of the said sale after the rate of £—— per cent. per annum, secured to the said C. D. in manner hereinafter mentioned: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*as in last Precedent*): THE SAID A. B. hereby covenants with the said C. D. to transfer or cause to be transferred into the name or names of the said C. D., his executors, administrators, or assigns, in the books of the Governor and Company of the Bank of England, on the —— day of —— next, the sum of £—— £2 $\frac{3}{4}$ per Cent. Consolidated Stock, and at the same time to pay to him or them interest for the said sum of £—— (*proceeds of sale of stock*), after the rate of £—— per cent. per annum, computed from the date of these presents: And if the said sum of £—— £2 $\frac{3}{4}$ per Cent. Consolidated Stock shall not be transferred as aforesaid on the said —— day of —— next, then to pay to him or them interest after the rate aforesaid, for the said sum of £—— (*proceeds of sale*), or for such sum as shall bear the same proportion to the said sum of £—— (*proceeds of sale*) as the £2 $\frac{3}{4}$ per Cent. Consolidated Stock for the time being owing on the security of these presents, shall bear to the said sum of £—— like stock, by equal half-yearly payments on the —— day of —— and the —— day of —— in every year until the whole of the last-mentioned sum of £2 $\frac{3}{4}$ per Cent. Consolidated Stock shall have been transferred as aforesaid: AND THIS INDENTURE ALSO WITNESSETH, &c. (*as in last Precedent to the end*).

IN WITNESS, &c.

TO SECURE
RE-TRANSFER
OF STOCK AND
INTEREST ON
PROCEEDS.

Covenant
to transfer
stock,

and to pay
interest on
proceeds.

No. XXXIII.

CONVEYANCE
WHERE PART
OF PURCHASE-
MONEY IS
SECURED BY
MORTGAGE.

CONVEYANCE of FREEHOLDS *where part of the PURCHASE-MONEY is retained by the PURCHASER, and secured by a MORTGAGE for a TERM of YEARS to the VENDOR (a).*

Parties.

Recite agreement for sale.

Part of purchase-money to remain due on security of freeholds.

Conveyance by vendor of parcels.

To hold to purchaser to use of vendor, to secure unpaid purchase-money, and then to use of purchaser in fee.

Best arrangement where part of purchase-money is retained on mortgage.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part: WHEREAS the said A. B. hath agreed to sell to the said C. D. the fee simple of the hereditaments hereinafter described, at the price of £500: AND WHEREAS upon the treaty for the said purchase it was agreed that the sum of £200, part of the said purchase-money, should remain in the hands of the said C. D., and that the payment thereof with interest should be secured in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £300, part of the said purchase-money of £500, to the said A. B. paid by the said C. D. on or before the execution of these presents (*the receipt, &c.*), and also in consideration of the sum of £200, being the remainder of the said purchase-money, secured to be paid to the said A. B. as hereinafter mentioned, the said A. B., as beneficial owner, hereby conveys unto the said C. D. ALL, &c. (*parcels*): To HOLD the same unto the said C. D. in fee simple: To THE USE of the said A. B., for the term of 500 years, computed from the day of the date of these presents, subject nevertheless to the proviso for the cesser of the said term hereinafter contained, and from and after the determination of the said term, and in the meantime subject thereto, To THE USE of the said C. D. in fee simple: PROVIDED ALWAYS,

(a) It is generally more convenient to have two deeds to carry out an arrangement for retaining a part of the purchase-money on mortgage of the purchased property, viz. (1), the conveyance to the purchaser in the usual form; and (2), a mortgage in the usual form from the purchaser to the vendor, executed immediately after the deed of conveyance. Sometimes, however, it is wished to effect the whole arrangement in one deed, and in that case the above Precedent may be adopted. It will be observed that the mortgage is for a term of years, it being assumed that the mortgage is only for a temporary purpose, and is likely to be shortly paid off.

that if the said C. D. shall on the — day of — next, pay to the said A. B. the sum of £200, with interest for the same after the rate of £ — per cent. per annum, computed from the date of these presents, then and in such case and immediately after such payment the said term of 500 years shall cease and determine. (*Covenants by C. D. for payment of principal and interest, suprd, p. 531.*)

IN WITNESS, &c.

CONVEYANCE
WHERE PART
OF PURCHASE-
MONEY IS
SECURED BY
MORTGAGE.

No. XXXIV.

CONVEYANCE of FREEHOLDS, by direction of PURCHASER, to a MORTGAGEE to secure part of the PURCHASE-MONEY (a).

MORTGAGE TO
SECURE PART
OF PURCHASE-
MONEY.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*vendor*), of the first part, C. D., of, &c. (*purchaser*), of the second part, and E. F., of, &c. (*mortgagee*), of the third part: WHEREAS the said A. B. hath agreed to sell to the said C. D. the fee simple of the hereditaments hereinafter described at the price of £1000: AND WHEREAS the said C. D., having occasion for the sum of £600 in order to enable him to complete the said purchase, hath requested the said E. F. to advance the said sum for that purpose, which he hath agreed to do on having the repayment thereof, with interest, secured in manner hereinafter mentioned: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £400 to the said A. B. paid by the said C. D. on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges), and in consideration of the sum of £600 to the said A. B. at the same time paid by the said E. F., by the direction of the said C. D. (the receipt whereof the said A. B. hereby acknowledges), the said A. B., as beneficial owner, at the request of the said C. D., hereby conveys unto the said

Parties.

Agreement for
sale.

Agreement to
lend part of
purchase-
money.

Consideration.

(a) See the note to the last Precedent.

**MORTGAGE TO
SECURE PART
OF PURCHASE-
MONEY.**

Vendor, by
direction of
purchaser,
conveys to
mortgagee.
Proviso for
redemption.

E. F., ALL, &c. (*parcels*): To HOLD the same unto and to the use of the said E. F. in fee simple: PROVIDED ALWAYS, that if the said C. D. shall on the — day of — next pay to the said E. F. the sum of £600, with interest for the same after the rate of £—— per cent. per annum, computed from the date of these presents, then and in such case the said hereditaments and premises shall, at the request and cost of the said C. D., his heirs or assigns, be conveyed to him or them. (*Covenant by C. D. with E. F. to pay principal and interest, supra, p. 531. Declaration as to leasing power, if desired, supra, p. 532.*)

IN WITNESS, &c.

No. XXXV.

MORTGAGE of a MORTGAGE DEBT and the SECURITY.

**MORTGAGE
DEBT AND
SECURITIES.**

Parties.

Recite mortgage.

That principal
sum remains
due.

Witnessing
part.

Covenant to
pay principal
and interest.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*mortgagor*), of the one part, and C. D., of, &c. (*mortgagee*), of the other part: WHEREAS by an indenture dated, &c., and made between X. Y., of, &c., of the one part, and the said A. B., of the other part, ALL, &c. (*parcels*), were conveyed by the said X. Y. unto and to the use of the said A. B. in fee simple, subject to a proviso therein contained for the redemption of the said hereditaments on payment by the said X. Y. to the said A. B. of the sum of £1000, with interest for the same after the rate of £—— per cent. per annum, on the — day of — then next: AND WHEREAS the said principal sum of £1000 still remains owing to the said A. B. upon the security of the hereinbefore recited indenture, with an arrear of interest thereon (*Recite agreement for loan*): NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), THE SAID A. B. hereby covenants, &c. (*covenants to pay principal money and interest, supra, p. 531*): AND THIS INDENTURE FURTHER WITNESSETH, that for the consideration aforesaid, the said A. B., as beneficial owner, hereby assigns unto the said C. D.,

THE SAID principal sum of £1000 now due and owing to the said A. B. upon the security of the hereinbefore recited indenture as aforesaid, and all interest now due and henceforth to become due for the same, and the benefit of all securities for the same (including the statutory power of sale), To HOLD the same unto the said C. D., subject to the proviso for redemption hereinafter contained: AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, THE said A. B., as beneficial owner, hereby conveys unto the said C. D., ALL the hereditaments and premises comprised in and conveyed by the hereinbefore recited indenture: To HOLD the same unto and to the use of the said C. D. in fee simple, subject to such right or equity of redemption as the same are now subject to by virtue of the hereinbefore recited indenture, and also subject to the proviso for redemption hereinafter contained: PROVIDED ALWAYS, and it is hereby agreed and declared, that if the said sum of £——, with interest thereon, shall be paid on the —— day of —— next, according to the foregoing covenant in that behalf, then and in such case the said principal sum and interest, hereditaments and premises hereinbefore assigned and conveyed respectively, shall at the request and cost of the said A. B., his executors, administrators, or assigns, be reassigned and reconveyed to him the said A. B., his heirs, executors, administrators, or assigns, subject as to the said hereditaments and premises to such right or equity of redemption (if any) as shall for the time being be subsisting therein under or by virtue of the hereinbefore recited indenture: PROVIDED ALWAYS, and it is hereby agreed and declared, that it shall not be incumbent on the said C. D., his executors, administrators, or assigns, to sue for or require payment of the said principal sum and interest hereby assigned, or any part thereof, unless he or they shall think fit so to do, nor shall he or they be responsible for any loss which may arise by reason of his or their omission or delay to enforce any of the said securities for the said principal sum and interest, or any part thereof.

IN WITNESS, &c.

MORTGAGE
DEBT AND
SECURITIES.

Mortgagor
assigns mort-
gage debt.

Mortgagor
conveys mort-
gaged pre-
mises

to mortgagee.

Proviso for
redemption.

Provision for
indemnity of
mortgagee.

No. XXXVI.

TO SECURE
EXISTING DEBT
AND FUTURE
ADVANCES.

MORTGAGE of FREEHOLDS to secure an EXISTING DEBT
and FUTURE ADVANCES (a).

Parties.

Recite that
mortgagor is
indebted and
agreement for
security.

Covenant by
mortgagor to
pay principal
and interest,

and to repay
further ad-
vances and
interest
thereon.

Conveyance to
mortgagee,
subject to
redemption.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*mortgagor*), of the one part, and C. D., of, &c. (*mortgagee*), of the other part: WHEREAS the said A. B. is indebted to the said C. D. in the sum of £1,000: AND WHEREAS the said A. B. hath agreed to secure the repayment of the said sum of £1,000, and also of any further sum or sums of money which may hereafter be advanced to him by the said C. D., with interest for the same respectively, in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the premises, the said A. B. hereby covenants with the said C. D. to pay to him on the — day of — next, the sum of £1,000, with interest for the same after the rate of £— per cent. per annum, computed from the date of these presents: AND ALSO to repay to the said C. D. such sum or sums of money as may hereafter be advanced by the said C. D. to the said A. B., with interest thereon after the rate aforesaid, computed from the time or respective times of advancing the same, such payment to be made on the — day of —, or the — day of —, which shall first happen after the principal money shall have been advanced as aforesaid: AND ALSO so long as any principal money hereinbefore covenanted to be paid shall remain unpaid after the day hereby appointed for payment thereof to pay to the said C. D. interest thereon after the rate aforesaid, on the — day of —, and the — day of —: AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the premises the said A. B., as beneficial owner, hereby conveys unto the said C. D. ALL, &c. (*parcels*): To HOLD the same unto and to the use of the said C. D., in fee simple: PROVIDED ALWAYS, that if the principal sum or sums of money hereinbefore covenanted to be paid, with interest thereon, shall be duly paid at the time or times hereinbefore appointed for

(a) This instrument will be chargeable with an *ad valorem* duty of 2s. 6d. per cent. in respect of the sum of £1,000, and will be a security in respect of the further advances for such an amount as the additional duty will extend to cover.

payment thereof, then and in such case the said premises shall, at the request and cost of the said A. B., be re-conveyed to him in fee simple. (*Declaration as to leasing power, if desired, supra*, p. 532.)

TO SECURE
EXISTING DEBT
AND FUTURE
ADVANCES.

IN WITNESS, &c.

INDORSEMENT to be MADE on the ABOVE DEED on
the occasion of a FURTHER ADVANCE.

I HEREBY ACKNOWLEDGE to have this day received from the within-named C. D. the sum of £——, being a further sum advanced on the within-mentioned security.

DATED this —— day of ——.

A. B.

No. XXXVII.

MORTGAGE of FREEHOLDS to a BANKING COMPANY to
secure BALANCE OF ACCOUNT CURRENT (a).

TO BANKING
COMPANY
TO SECURE
ACCOUNT CUR-
RENT.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (hereinafter called "the mortgagor"), of the one part, and The —— Banking Company (hereinafter called "The Company"), of the other part, WITNESSETH, that the mortgagor hereby covenants with the Company that he, the mortgagor, will pay to the Company all sums of money which now are or shall from time to time hereafter become owing from the mortgagor to the Company, whether alone or in co-partnership with any other person or persons, in account current with the Company (including money owing upon any cheques, promissory notes, or bills of exchange, drawn, accepted, or indorsed by the mortgagor, or which shall have been paid for his credit either solely or jointly with others, and including also interest with half-yearly rests, commission, and other customary charges), when thereunto required by the Company, or their Secretary or Manager, or any Branch Manager thereof; and if at the time when the said account shall be closed by the death of the

Parties.

Covenant by
mortgagor
with company
to pay moneys
owing on
account cur-
rent.

(a) This instrument will be a security for such an amount as the duty at 2s. 6d. per cent. will extend to cover.

TO BANKING
COMPANY
TO SECURE
ACCOUNT CUR-
RENT.

Conveyance of
freeholds
to company.

Proviso for
redemption.

Covenant by
mortgagor for
insurance.

Statutory
power of sale
to apply, with
a variation.

mortgagor or otherwise, a balance thereon shall be owing to the Company, the mortgagor will forthwith pay such balance, with interest thereon, after the rate of £5 per cent. per annum, computed from the time when the same shall be ascertained:

AND THIS INDENTURE ALSO WITNESSETH, that the mortgagor, as beneficial owner, hereby conveys unto the Company ALL, &c. (*parcels*): To HOLD the same unto the Company, in fee simple: PROVIDED ALWAYS that if all moneys hereinbefore covenanted to be paid shall be duly paid accordingly, then the said hereditaments and premises shall, at the request and cost of the mortgagor, his heirs or assigns, be re-conveyed to him or them: AND THE mortgagor hereby covenants with the Company that he will at all times during the continuance of this security keep the buildings on the mortgaged premises insured against loss or damage by fire in their full value, and will, on demand, produce to the Company the policy of such insurance and the receipt for every premium payable for that purpose: AND IT IS DECLARED that the power of sale conferred on mortgagees by the Conveyancing and Law of Property Act, 1881, shall apply to these presents with this variation, that the power may be exercised if default is made in payment of the mortgage-money or part thereof for one calendar month instead of three months after service of the notice required by section 20 of the said Act, and for the purpose of the said statutory power the money hereby secured shall be deemed to have become due immediately after the execution of these presents. (*Declaration as to leasing power if desired, supra, p. 532.*)

IN WITNESS, &c.

No. XXXVIII.

TO TRUSTEES
FOR BANKING
COMPANY
TO SECURE
ACCOUNT CUR-
RENT.

Parties.

MORTGAGE to TRUSTEES for UNINCORPORATED BANKING
COMPANY to secure BALANCE of ACCOUNT CURRENT.

THIS INDENTURE, made the — day of —, BETWEEN
A. B., of, &c. (*mortgagor*), of the one part, and C. D. and

E. F., of, &c., trustees of the — Banking Company, of the other part, WITNESSETH, that the said A. B. (hereinafter called the mortgagor), hereby covenants with the said C. D. and E. F. that he the mortgagor will pay to the said Company, &c. (*same as last Precedent, to beginning of second testatum, suprà, p. 581*): AND THIS INDENTURE ALSO WITNESSETH, that the mortgagor, as beneficial owner, hereby conveys unto the said C. D. and E. F., ALL, &c. (*parcels*), To HOLD the same unto and to the use of the said C. D. and E. F. in fee simple (*proriso for redemption, and clause as to statutory power of sale as in last Precedent, suprà, p. 582*): AND IT IS HEREBY AGREED AND DECLARED, that if at any time or times during the continuance of this security the hereditaments and premises hereby conveyed shall be conveyed to any other persons or person as trustees or a trustee of the said company, for the purposes of this security, so as to vest in them or him, either solely or jointly with the trustees or trustee by whom such conveyance shall be made, then and in every such case the persons or person in whom the said hereditaments and premises shall for the time being be vested as aforesaid shall and may have and exercise the statutory power of sale and all other powers vested in the said C. D. and E. F., as fully and effectually as if they or he had been named herein, instead of the said C. D. and E. F., and the statement in any deed by which the said hereditaments and premises shall or may be conveyed as aforesaid that the persons or person to whom the same shall be thereby conveyed are or is trustees or a trustee of the said company shall be conclusive evidence of the fact so stated, and no purchaser or other person deriving title to the said hereditaments and premises, or any part thereof, through any act of the persons or person to whom such statement shall relate, shall be bound or concerned to see or inquire whether the same persons or person shall have been duly and properly constituted such trustees or trustee: AND IT IS HEREBY ALSO AGREED AND DECLARED, that the acknowledgment by the persons or person in whom the hereditaments and premises hereby conveyed shall for the time being be vested for the purposes of this security, or by any two directors of the said company, that the moneys hereby secured have been fully satisfied, shall be conclusive evidence that the same have been satisfied accordingly: AND IT IS HEREBY LASTLY AGREED.

TO TRUSTEES
FOR BANKING
COMPANY
TO SECURE
ACCOUNT CUR-
RENT.

Covenant to
pay principal
and interest.

Mortgagor
conveys to
company.

Power of sale
and other
powers may be
exercised by
any persons in
whom pro-
perty may
become vested
as trustees of
the company.

Acknowledg-
ment by
trustees, or by
two directors,
to be conclu-
sive evidence
that moneys
are satisfied.

Security to
extend to

TO TRUSTEES
FOR BANKING
COMPANY
TO SECURE
ACCOUNT CUR-
RENT.

future share-
holders of
company.

AND DECLARED, that these presents shall be a security to the said banking company for the moneys hereby secured, of whatever shareholders or partners the said company may from time to time consist, and under whatever style or firm the banking business now carried on by the said company may for the time being be carried on. (*Declaration as to leasing power if desired, supra*, p. 532.)

IN WITNESS, &c.

No. XXXIX.

MORTGAGE OF
FREEHOLDS
AND
LEASEHOLDS
COMPRISED IN
DOCUMENTS
IN SCHEDULE.
(*Short Form.*)

MORTGAGE (a) to a BANKING COMPANY of FREEHOLDS and LEASEHOLDS comprised in the DOCUMENTS contained in SCHEDULE to secure BALANCE of ACCOUNT CURRENT. (*Short form*) (b).

Parties.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*mortgagor*), of the one part, and the — Banking Company (hereinafter called "The Company") of the other part: WITNESSETH, that the said A. B. (hereinafter called the *mortgagor*), hereby covenants with the company (*covenant by mortgagor to pay moneys owing on account current, supra*, p. 581):

Covenant by
mortgagor to
pay money
owing on
account cur-
rent.

Advantage of
mortgage by
deed over
memorandum.

(a) As to the stamp this instrument will bear, see note *supra*, p. 581.

(b) It may often be expedient for the company to require that a short mortgage by deed of the property comprised in the deposited documents should be executed by the borrower in preference to a mere memorandum under his hand, so that the bankers may at once obtain all the proper remedies, including a power to sell in case of default, without the necessity of any application to the Court for the purpose, and also the advantage of priority, which the acquisition of the legal estate without notice of prior equitable incumbrances may frequently afford.

When the advances are large, the perfectness and efficiency of the security ought not to be sacrificed to the consideration that the mortgage deed will become a document of title, and will require a reconveyance when the debt is satisfied. The losses which bankers often incur and the expenses to which they are often put in consequence of not taking a legal mortgage are sufficient reasons for in many instances altering the practice.

Reconveyance.

The reconveyance may be framed in a few words, and endorsed on the mortgage deed. For a form of such reconveyance and surrender, as being applicable to the present form of mortgage as soon as the debt is satisfied, see *infra*, p. 585.

AND THIS INDENTURE ALSO WITNESSETH, that the mortgagor, as beneficial owner, hereby conveys and demises unto the company, THE hereditaments and property comprised in the documents set forth in the schedule hereto: To HOLD the same as to such of them as are freehold unto the company in fee simple, and for all other the estate and interest of the mortgagor therein, and as to such of them as the mortgagor is entitled to for any term or terms of years, whether absolute or determinable, unto the company for all the residue now unexpired of the said terms of years respectively (except the last day of such terms respectively): PROVIDED ALWAYS, that if all moneys hereinbefore covenanted to be paid shall be duly paid pursuant to the foregoing covenant, the said premises shall, at the request and cost of the mortgagor, be reassured to him (*Statutory power of sale to apply with a variation, supra, p. 582*); And it is also declared, that after any sale of leasehold property the mortgagor, his executors, administrators, or assigns, shall stand possessed of the last day of the term subsisting in the property so sold under the lease thereof, IN TRUST for the purchaser, and to be assigned and disposed of as he shall direct. (*Declaration as to leasing power if desired, supra, p. 532.*)

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. XL.

RECONVEYANCE of FREEHOLDS and SURRENDER of
LEASEHOLDS by a BANKING COMPANY on all MONEYS
being PAID OFF (by deed ENDORSED or WRITTEN AT THE
END of the last MORTGAGE DEED) (a).

RECONVEYANCE
AND SUR-
ENDER OF
FREEHOLDS
AND LEASE-
HOLDS BY A
BANKING COM-
PANY.
Parties.

THIS INDENTURE, made the — day of —, BETWEEN the
within [or above] named Company of the one part, and the within

(a) It is apprehended that the stamp would be determined by the *ad valorem* stamp on the indenture of mortgage. In other words, the reconveyance must carry a stamp of 6d. for every 2s. 6d., with which the mortgage deed is stamped.

RECONVEYANCE
AND SUB-
RENDER OF
FREEHOLDS
AND LEASE-
HOLDS BY A
BANKING COM-
PANY.

Acknowledg-
ment that all
moneys have
been paid.
Company con-
veys and
surrenders
freeholds and
leaseholds to
mortgagor.

[or above] named A. B. of the other part: WITNESSETH, that the said company hereby acknowledges that all moneys secured by the within [or above] written indenture have been paid and satisfied, and in consideration thereof the said company as mortgagee hereby conveys and surrenders unto the said A. B., ALL the hereditaments and property comprised in the within [or above] written indenture, as to such of them as are freehold, unto and to the use of the said A. B., in fee simple, and as to such of them as are leasehold to the intent that the derivative terms of years created by the said indenture shall cease and determine, and as to all the said hereditaments and property absolutely discharged from the moneys secured by the said indenture, and all claims and demands on account thereof.

IN WITNESS, &c.

No. XLI.

OF FREEHOLDS
TO A BUILDING
SOCIETY.

Parties.

MORTGAGE of FREEHOLDS to a BUILDING SOCIETY (a).

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c. (hereinafter called "the mortgagor"), (*mortgagor*),

The Building
Societies Act,
1874.

(a) The Act 6 & 7 Wm. 4, c. 32, for the regulation of Benefit Building Societies, is repealed by the Building Societies Act, 1874 (37 & 38 Vict. c. 42, s. 7), but the repeal does not affect any subsisting society certified under the repealed Act, until such society shall have obtained a certificate of incorporation under the new Act. Any society whose rules have been certified under the Act of Wm. 4, may obtain a certificate of incorporation under the new Act (38 Vict. c. 9, s. 2); and every subsisting or future society, upon receiving a certificate of incorporation, becomes a body corporate by its registered name (37 & 38 Vict. c. 42, s. 9).

Any society may, from time to time, as the rules permit, invest any portion of its funds upon real or leasehold securities, or other specified securities. (Sect. 25.)

Whenever a member of a society having executed a mortgage to the society dies intestate, leaving an infant heir, the society, after selling the mortgaged property, may pay to his administrator the surplus proceeds of the sale to the amount of £150, without paying it into the Post Office Savings Bank under 30 & 31 Vict. c. 142, s. 24. (Sect. 30.)

Sect. 41 exempts from stamp duty the rules of the society and other documents therein mentioned, but provides that the exemption shall not extend to any mortgage.

See the Building Societies Act, 1875 (38 Vict. c. 9); the Building Societies Act, 1877 (40 & 41 Vict. c. 63); and the Building Societies Act, 1884 (47 & 48 Vict. c. 41).

of the one part, and the — Benefit Building Society, incorporated under the “Building Societies Act, 1874” (hereinafter called “the said society”), (*mortgagees*), of the other part: WHEREAS the mortgagor is the owner of — shares in the said society, numbered respectively —, and he is by the rules of the said society entitled to an advance of £— in respect of each of the said shares, making an aggregate advance of £—, on his executing the mortgage hereinafter contained: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £— to the mortgagor paid by the said society on or before the execution of these presents (the receipt whereof the mortgagor hereby acknowledges), the mortgagor, as beneficial owner, hereby conveys unto the said society, ALL THOSE, &c. (*parcels*): To HOLD the same unto and to the use of the said society in fee simple, UPON TRUST, to permit the mortgagor to hold and enjoy the said hereditaments and premises, and receive the rents and profits thereof, so long as the mortgagor shall duly pay the subscriptions and other sums of money which ought from time to time to be paid in respect of the said shares, according to the rules for the time being in force of the said society, and shall in all respects duly observe the said rules, and also the covenants and provisions hereinafter contained which ought on his part to be observed and performed: BUT IN CASE the mortgagor shall at any time fail for three calendar months to pay the said subscriptions and other sums of money, or any of them, or shall at any time fail in other respects to observe and perform the said rules, covenants, and provisions, or any of them, then and in any or either of the said cases it shall be lawful for the said society at any time thereafter to take possession of the said hereditaments and premises, and to let the same for any term, and upon such conditions as they shall think fit, and to appoint any person or persons, at such remuneration as they shall think proper, to collect the rents and profits of the said hereditaments and premises on behalf of the said society until sale thereof, and also at the discretion of the said society, without giving any previous notice in that behalf to the mortgagor, to sell the said hereditaments and premises, with all such powers as regards the mode of sale and otherwise as are by the Conveyancing and Law of Property Act, 1881, annexed to the power of sale conferred by that Act on mortgagees: AND

OF FREEHOLDS
TO A BUILDING
SOCIETY.

Advance
mortgagor is
entitled to
in respect of
his shares.

Consideration
paid by society
to mortgagor.

Mortgagor
conveys parcels to society,
upon trust to
permit mortgagor to enjoy
the hereditaments so long
as payments are duly made
and covenants are duly performed.

But in case of
default, society
may take
possession of
or let hereditaments, and
appoint a
receiver,

and sell hereditaments.

**OF FREEHOLDS
TO A BUILDING
SOCIETY.**

Rents and sale
moneys to be
applied in
payment of
costs, then in
payment of
subscriptions,
fines, &c.

Surplus to be
paid to mort-
gagor.

Lessees and
purchasers not
bound to in-
quire as to
default.

Declaration as
to leasing
power.

Covenants by
mortgagor
that he will
make the pay-
ments and ob-
serve the rules;

that he will
keep the pre-
mises in good
repair, and
insured
against fire.

Proviso that
powers con-
ferred are in
addition to
other powers
and remedies.

Interpretation
of term
"mortgagor."

IT IS HEREBY DECLARED that the said society shall, with and out of any rents or sale moneys received by them as aforesaid, in the first place retain and pay all costs, charges, and expenses incurred by them in relation to this security; and in the next place shall retain all subscriptions, fines, and other moneys then due, or which may thereafter become due in respect of the said shares or under this security: AND shall pay the surplus (if any) to the mortgagor: AND IT IS HEREBY DECLARED, that upon any lease or sale made by the said society under any of the aforesaid powers in that behalf, the lessee or purchaser shall not be bound or concerned to see or inquire whether any of the cases have happened in which such lease or sale is hereinbefore authorized to be made, or otherwise as to the propriety of such lease or sale, or be affected by notice that no such case as aforesaid has happened, or that the lease or sale is otherwise improper: AND IT IS HEREBY ALSO DECLARED that no lease made by the mortgagor of the said premises during the continuance of this security shall have effect by force or virtue of section 18 of the Conveyancing and Law of Property Act, 1881, unless the said society shall consent thereto in writing: AND the mortgagor hereby covenants with the said society, THAT he the mortgagor will from time to time make the several payments, and observe and perform the rules for the time being in force of the said society in respect of the said shares which on his part ought to be paid, observed, and performed: AND ALSO will at all times during the continuance of this security keep the said hereditaments and premises in good, substantial, and complete repair and condition, and also keep the same insured against loss or damage by fire in the sum of £—— at least, and will, on demand, produce to the said society the policy of such insurance, and the receipt for every premium payable in respect thereof: PROVIDED ALWAYS, that the powers hereby conferred on the said society are in addition to all other powers and remedies vested in the said society under the rules and regulations thereof, or by statute, for recovering or enforcing payment of the moneys intended to be hereby secured: AND IT IS HEREBY DECLARED that, where the context allows, the expression "the mortgagor" used in these presents includes, besides the said A. B., all persons deriving title under him.

IN WITNESS, &c.

No. XLII.

MORTGAGE of LEASEHOLDS to a BUILDING SOCIETY.

OF LEASEHOLDS
TO A BUILDING
SOCIETY.

THIS INDENTURE, made the — day of —, BETWEEN
A. B., of, &c. (hereinafter called “the mortgagor”) (*mortgagor*),
of the one part, and the — Building Society, incorporated
under the Building Societies Act, 1874 (hereinafter called “the
said society”) (*mortgagees*), of the other part: WHEREAS by an
indenture of lease, dated the — day of —, and made be-
tween —, of the one part, and the said A. B. of the other
part: ALL THAT piece or parcel of ground (*parcels as in the
lease*) were demised unto the mortgagor, his executors, adminis-
trators, and assigns, for the term of ninety-nine years, from the
— day of —, at the yearly rent of £—, and subject to
the covenants and conditions therein contained, and on the part
of the lessee to be observed and performed: AND WHEREAS by
another indenture of lease, bearing even date with the last
recited indenture, and made between the same persons as are
parties to the last recited indenture, ALL THAT other piece or
parcel of ground (*parcels as in this lease*) were demised unto the
mortgagor, his executors, administrators, and assigns, for the
like term of ninety-nine years, from the said — day of —,
at the like yearly rent of —, and subject to the covenants
and conditions therein contained, and on the part of the lessee
to be observed and performed (*Recite that mortgagor is entitled
to advance in respect of his shares, supra, p. 587*): NOW THIS
INDENTURE WITNESSETH, that in consideration of the
sum of £— paid to the mortgagor by the said society on or
before the execution of these presents (the receipt whereof the
mortgagor hereby acknowledges), the mortgagor, as beneficial
owner, hereby demises unto the said society, ALL the pieces or
parcels of ground, hereditaments, and premises, comprised in
and demised by the two hereinbefore recited indentures of lease
respectively: TOGETHER WITH the three several messuages or
dwelling-houses and the buildings in connection therewith lately
erected and built on the said demised premises: To HOLD the
same unto the said society during all the residue now unexpired

Parties.

Recite one
indenture of
lease,

another
indenture of
lease.

Mortgagor
demises lease-
hold parcels

to society for
residue of
terms (less one
day).

OF LEASEHOLDS
TO A BUILDING
SOCIETY.

In trust for
mortgagor
until default
in making the
payments.

In case of
default society
may take pos-
session and let
or sell.

Declaration as
to application
of rents and
sale moneys.

Trust of last
day of term
after a sale.

Covenants by
mortgagor to
make pay-
ments.

of the said two several terms of ninety-nine years granted therein by the said indentures of lease respectively (except the last day of each of the said terms) : UPON TRUST to permit the mortgagor to hold and enjoy the said hereditaments and premises, and receive the rents and profits thereof so long as the mortgagor shall duly pay the subscriptions and other sums of money which ought from time to time to be paid in respect of the said shares, according to the rules for the time being in force of the said society, and shall in all respects duly observe the said rules, and shall also pay the rents reserved by the said indentures of lease, and observe and perform the covenants and conditions therein contained which ought on the lessee's part to be observed and performed : BUT IN CASE he shall at any time fail for three calendar months to pay the said subscriptions and other sums of money, or any of them, or shall at any time fail in other respects to observe and perform the said rules, covenants, and conditions, or any of them, then and in any or either of the said cases (*society may take possession of or let hereditaments—appoint a receiver and sell hereditaments, see *supra*, p. 587*), AND IT IS HEREBY DECLARED that the said society shall, out of any rents or sale moneys received by them as aforesaid, in the first place retain and pay all costs, charges, and expenses incurred by them in relation to this security, including any costs, charges, or expenses which may be incurred in preserving the said hereditaments and premises from forfeiture, by paying the several rents, or performing the several covenants on the lessee's part respectively reserved and contained by and in the said two recited indentures of lease, AND in the next place shall retain all subscriptions, fines, and other moneys which shall then be due, or which may thereafter become due in respect of the said shares or under this security, and shall pay the surplus (if any) to the mortgagor (*Lessees and purchasers not bound to inquire as to default, supra, p. 588*) : AND IT IS HEREBY DECLARED that after any sale made by the said society, the mortgagor shall hold the premises sold for the last day of the term granted therein by the said indentures of lease respectively, in trust for the purchaser, and to be assigned and disposed of as he may direct (*Declaration as to leasing power, supra, p. 532*) : AND THE mortgagor hereby covenants with the said society to pay the subscriptions and other sums which ought from time to time to be

paid in respect of the said shares according to the rules for the time being of the said society, and in all respects to observe the said rules (a): (*Proviso that powers given by this deed are in addition to other powers and remedies. Interpretation of term "the mortgagor,"* *supra*, p. 588).

IN WITNESS, &c.

OF LEASEHOLDS
TO A BUILDING
SOCIETY.

No. XLIII.

MORTGAGE of FREEHOLDS or LEASEHOLDS (b) to a BUILDING SOCIETY. (*A form adapted to the Conveyancing Act, 1881.*)

OF FREEHOLDS
OR LEASE-
HOLDS TO A
BUILDING
SOCIETY.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (hereinafter called "the mortgagor"), of the one part, and The — Building Society, incorporated under the Building Societies Act, 1874 (hereinafter called "the said society") of the other part: WITNESSETH that in consideration of the sum of £—, now paid to the mortgagor out of the funds of the said society, being the advance to which he is entitled under the rules of the society in respect of — shares held by him (the receipt whereof the mortgagor hereby acknowledges) the mortgagor hereby covenants with the said society that he the mortgagor will duly and punctually pay all the subscriptions and other moneys, and duly observe all the regulations, which, according to the rules of the said society for the time being in force, ought to be paid and observed by him in respect of his said shares, or the — advance now made to him as aforesaid, or in respect of the hereditaments intended to be hereby conveyed [*or demised*]: AND THIS INDENTURE ALSO WITNESSETH that for the consideration aforesaid, the mortgagor as beneficial owner hereby conveys [*or demises*] unto the said society;

Parties.

In considera-
tion of sum
now paid.

Mortgagor
covenants to
pay subscrip-
tions, &c.

Mortgagor
conveys free-
holds or
demises lease-
holds to
society.

(a) It is assumed that the lease contains covenants to repair and insure, in which case it is unnecessary to insert any such covenants in the mortgage, because they will be covered by the covenants implied under sect. 7 of the Conveyancing Act, 1881, to observe the covenants in the lease.

(b) The alterations to be made if the property is leasehold are inserted within brackets.

OF FREEHOLDS
OR LEASE-
HOLDS TO A
BUILDING
SOCIETY.

Proviso for
vacating the
deed.

Declaration
that society
shall permit
mortgagor to
retain posses-
sion until
default.
Power to
society to enter
in case of
default.

Cases in which
powers of sale
and of ap-
pointing a
receiver may
be exercised.

In case of a
sale what sum
shall be
deemed to
be due.

THE hereditaments described in the schedule hereto: To HOLD the same unto and to the use of the said society in fee simple [or unto the said society for the residue of the term of years granted therein by the indenture of lease mentioned in the said schedule except the last day thereof]; PROVIDED ALWAYS that if the mortgagor shall duly make all the payments and observe all the regulations hereinbefore covenanted to be made and observed by him, then these presents shall be vacated by a receipt to be endorsed thereon pursuant to section 42 of the above-mentioned Act: AND IT IS HEREBY DECLARED that the said society shall permit the mortgagor to retain possession of the said premises so long as he shall duly make the payments and observe the regulations aforesaid, but if he shall make default in the payment of any monthly subscription or other money payable by him under the said rules or the foregoing covenant for the space of three calendar months after the same shall have become due, or shall commit any other breach of the said rules, then and in either of such cases the said society may at any time thereafter enter into possession of the said premises: AND IT IS HEREBY ALSO DECLARED, by way of variation of the provisions contained in the Conveyancing and Law of Property Act, 1881, relating to the powers of sale and of appointing a receiver conferred by section 17 of that Act, that the said powers may be exercised by the said society at any time hereafter, if at the time of the exercise thereof any case shall have happened in which the said society is hereinbefore authorized to take possession of the said premises, and it shall not be necessary to give any such notice to the mortgagor as is mentioned in section 20 of the said Act: AND ALSO that any receiver to be appointed under the said power in that behalf may, with and out of the moneys received by him in that capacity, pay the monthly subscriptions and other sums of money the payment whereof is intended to be hereby secured, in addition to the payments other than interest directed or authorized to be made thereout by section 24 of the said Act: AND IT IS HEREBY ALSO DECLARED that if the said premises or any part thereof shall be sold by the said society under the said power in that behalf, there shall be deemed to be due and owing at the time of such sale from the mortgagor to the said society, in addition to the arrears of subscriptions and other moneys then actually due and owing, such a sum of money

as under No. — of the present registered rules of the said society, or under any new rule to be substituted for the same, and which may be then in force, would be payable by the mortgagor for redemption, if he had elected to redeem in the half-year in which such sale shall be made, and the same shall be deducted and retained by the said society out of the sale moneys accordingly :

[AND IT IS HEREBY ALSO DECLARED, that after any sale made as aforesaid, the mortgagor shall stand possessed of the premises sold for the last day of the term granted therein by the said indenture of lease in trust for the purchaser, and to be assigned and disposed of as he may direct]: AND IT IS HEREBY ALSO DECLARED, that no lease made by the mortgagor of the said premises, or any part thereof, during the continuance of this security, shall have effect by force or virtue of section 18 of the last-mentioned Act, unless the said society shall consent thereto in writing: AND IT IS ALSO DECLARED, that where the context allows, the expression "the mortgagor," in these presents, includes, besides the said A. B., all persons from time to time deriving title under him.

IN WITNESS, &c.

OF FREEHOLDS
OR LEASE-
HOLDS TO A
BUILDING
SOCIETY.

That no lease
by mortgagor
shall have any
effect under
Conveyancing
Act, 1881,
without
society's
consent.
Society may
determine
tenancy by
giving to
mortgagor
seven days'
notice to quit.

THE SCHEDULE ABOVE REFERRED TO.

ALL THAT, &c. (*parcels*) ; (or, if the property is leasehold, the hereditaments comprised in an indenture of lease, dated, &c. (*date and parties*), and therein described as "All that," &c. (*describe parcels, as in lease*)), which premises were by the said indenture of lease demised unto the said A. B. from the — day of —, 18—, for the term of — years thence next ensuing, at the yearly rent of £—, and subject to the lessee's covenants therein contained.

No. XLIV.

TO TWO
MORTGAGEES.

MORTGAGE *to Two Persons who ADVANCE the MONEY in*
EQUAL SHARES.

Parties.

Covenant by
mortgagor to
pay principal
and interest.

Mortgagor
conveys

to mortgagees,
subject to
proviso for
redemption.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*mortgagor*), of the one part, and C. D., of, &c., and E. F., of, &c. (*mortgagees*), of the other part: WITNESSETH, that in consideration of the sum of £1,000 paid to the said A. B. by the said C. D. and E. F. in equal shares, on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges), the said A. B. hereby covenants with the said C. D. and E. F., to pay to them in equal shares, on the — day of — next, the sum of £1,000, with interest thereon in the meantime, after the rate of £— per cent. per annum, computed from the date of these presents, AND also so long after that day as any principal money remains due under these presents, to pay to them interest thereon after the same rate by equal half-yearly payments, on the — day of —, and the — day of —: AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B., as beneficial owner, hereby conveys unto the said C. D. and E. F., ALL, &c. (*parcels*): To HOLD the same unto and to the use of the said C. D. and E. F. in fee simple, as tenants in common: PROVIDED ALWAYS that if the said sum of £1,000, with interest thereon, shall be paid on the — day of — next, according to the foregoing covenant in that behalf, the said premises shall, at the request and cost of the said A. B., his heirs or assigns, be reconveyed to him or them. (*Declaration as to leasing power, if desired, supra, p. 537.*)

IN WITNESS, &c.

No. XLV.

MORTGAGE to Four persons, Two of whom advance part of the money in UNEQUAL shares, and the OTHER Two advance the REMAINDER on a JOINT ACCOUNT (a).

TO SEVERAL
PERSONS IN
UNEQUAL
SHARES.

THIS INDENTURE, made the — day of —, BETWEEN Parties.

A. B., of, &c. (*mortgagor*), of the first part, C. D., of, &c. (*one mortgagee*), of the second part, E. F., of, &c. (*another mortgagee*), of the third part, and G. H., of, &c., and I. K., of, &c. (*other mortgagees*), of the fourth part, WITNESSETH, that in consideration of the sum of £100 paid to the said A. B. by the said C. D. on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges), the said A. B. hereby covenants with the said C. D., &c. (*to pay principal and interest, supra*, p. 531): AND THIS INDENTURE

Covenant by mortgagor with one mortgagee to pay money advanced by him.

FURTHER WITNESSETH, that in consideration of the sum of £200 paid to the said A. B. by the said E. F. on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges), the said A. B. hereby covenants with the said E. F., &c. (*to pay principal and interest, supra*, p. 531): AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the sum of £150 paid to the said A. B. by the said G. H. and I. K. on or before the execution of these presents, out of moneys belonging to them on a joint account (the receipt whereof the said A. B. hereby acknowledges), the said A. B. hereby covenants with the said G. H. and I. K., &c. (*to pay principal and interest, supra*, p. 536): AND THIS INDENTURE ALSO WITNESSETH, that for the considerations hereinbefore expressed the said A. B., as beneficial owner, hereby conveys unto the said C. D., E. F., G. H., and I. K., ALL, &c. (*parcels*): To HOLD the same unto and to the use of the said C. D., E. F., G. H.,

Similar covenant with another.

Similar covenant with joint mortgagees.

(a) Where several persons contribute the money advanced between them, it is generally convenient to take the mortgage in the names of some of them, or their nominees, as joint tenants, with a separate declaration of trust. The above Precedent will, however, be found useful in cases where it is wished to have one deed only.

TO SEVERAL
PERSONS IN
UNEQUAL
SHARES.

Conveyance
by mortgagor
to all the mort-
gagees, subject
to proviso for
redemption.

Declaration
that mort-
gagees shall
be entitled
pari passu.

and I. K., in fee simple: PROVIDED ALWAYS that if the said principal sums of £100, £200, and £150, with interest thereon, respectively, shall be paid on the said — day of — next, according to the foregoing covenant in that behalf, the said premises shall, at the request and cost of the said A. B., his heirs or assigns, be reconveyed to him or them: AND IT IS HEREBY DECLARED that during the continuance of this security all persons in whom the hereditaments hereby conveyed shall for the time being be vested, shall hold the same in trust for the persons for the time being entitled to the principal sums of £100, £200, and £150, hereby secured, and the interest thereof respectively, *pari passu*, and without any preference or priority. (*Declaration as to leasing power if desired, supra, p. 537.*)

IN WITNESS, &c.

No. XLVI.

DECLARATION
OF TRUST ON
CONTRIBUTORY
MORTGAGE.

DECLARATION of TRUST of MONEY SECURED on MORTGAGE, and CONTRIBUTED by DIFFERENT LENDERS in UNEQUAL PROPORTIONS, the MORTGAGE having been taken in the NAMES of FOUR TRUSTEES NOMINATED by the LENDERS (a).

Recite mort-
gage of even
date for
£5,000.

TO ALL TO WHOM THESE PRESENTS shall come, A. B., of, &c., C. D., of, &c., E. F., of, &c., and G. H., of, &c., send greeting: WHEREAS by an indenture bearing even date with, but executed before these presents, and made between X. Y., of, &c., of the one part, and the said A. B., C. D., E. F., and G. H., of the other part, in consideration of the sum of £5000 therein expressed to be paid to the said X. Y. by the said A. B., C. D., E. F., and G. H., out of moneys belonging to them on a joint account divers messuages, lands, and hereditaments situate in the parish of —, in the county of —, therein more particularly described, have been conveyed unto and to

(a) The mortgage in this case is supposed to have been in the form of Precedent No. IV.

the use of the said A. B., C. D., E. F., and G. H., in fee simple, by way of mortgage for securing the payment by the said X. Y., unto the said A. B., C. D., E. F., and G. H., of the sum of £5000, with interest for the same after the rate of £—— per cent. per annum, on the —— day of —— next, and in the said indenture is contained a covenant by the said X. Y. for the payment of the said principal sum of £5000, and the interest thereof: AND WHEREAS the sum of £5000 in the hereinbefore recited indenture expressed to be paid to the said X. Y. by the said A. B., C. D., E. F., and G. H. as aforesaid, was in fact money contributed by the several persons and in the shares and amounts next hereinafter mentioned (that is to say), the sum of £1000 (part thereof) by I. K., of, &c., the sum of £1500 (other part thereof) by L. M. and N. O., as the trustees of an indenture of settlement, dated the —— day of ——, and made upon the marriage of —— with ——, the sum of £2000 (other part thereof) by P. Q. and R. S., the executors and trustees named in the will of ——, dated the —— day of ——, and the sum of £500 (residue thereof), by T. V., the wife of U. V., of, &c., being money belonging to her for her separate use: AND WHEREAS the said A. B., C. D., E. F., and G. H. have agreed at the request of the several persons by whom the said sum of £5000 was contributed as aforesaid, to execute such declaration of trust as is hereinafter contained: NOW THESE PRESENTS WITNESS, that in consideration of the premises, it is hereby declared that the said A. B., C. D., E. F., and G. H., shall stand and be possessed of and interested in the said sum of £5000 secured by the hereinbefore recited indenture, and the interest thereof, upon the trusts following (that is to say), As to the sum of £1000 (part of the said principal sum) and the interest of the said sum of £1000, in trust for the said I. K. absolutely, As to the sum of £1500 (other part of the said principal sum) and the interest of the said sum of £1500, in trust for the said L. M. and N. O., as the trustees of the said indenture of settlement of the —— day of ——, As to the sum of £2000 (other part of the said principal sum) and the interest of the said sum of £2000, in trust for the said P. Q. and R. S., as the trustees of the said will of the said ——, AND AS to the sum of £500 (residue of the said principal sum) and the interest of the said sum of £500, in trust for the said T. V., for her

DECLARATION
OF TRUST ON
CONTRIBUTORY
MORTGAGE.

That £5000
was contribu-
ted by several
persons in
different
shares.

Agreement by
trustees to
execute
declaration
of trust.

Witnessing
part.

Declaration
by trustees
that they will
stand pos-
sessed of said
£5,000.

As to part for
I. K.

As to other
part for L. M.
and N. O.

As to other
part for P. Q.
and R. S.

And as to
residue for
T. V. for her
separate use.

DECLARATION
OF TRUST ON
CONTRIBUTORY
MORTGAGE.

No priority
between
*cestuis que
trust*.
Declaration
that trustees
shall hold
securities in
trust for
lenders
according to
their shares
and interests.

separate use, and so that the said I. K., and L. M. and N. O., and P. Q. and R. S., and T. V., respectively, shall be entitled to their several and respective shares in the said principal sum and interest *pari passu*, and without preference or priority: AND IT IS HEREBY FURTHER DECLARED that the said A. B., C. D., E. F., and G. H., shall stand and be seised and possessed of and interested in the hereditaments and premises conveyed by the hereinbefore recited indenture (subject to the right of redemption subsisting therein), and all other the securities for the said principal sum of £5000, and the interest thereof, IN TRUST for the said I. K., and L. M. and N. O., and P. Q. and R. S., and T. V., according to their several shares and interests in the said principal sum of £5000 and the interest thereof.

IN WITNESS, &c.

No. XLVII.

OF PART OF A
SUM SECURED
ON CONTRIBU-
TORY
MORTGAGE.

DECLARATION of TRUST of PART of a sum of MONEY
secured on a CONTRIBUTORY MORTGAGE.

Parties.

Recite mort-
gage and that
part of money
belongs to
*cestui que
trust*.

Witnessing
part.

Declaration of
trust.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c., C. D., of, &c., E. F., of, &c., and G. H., of, &c., of the one part, and I. K., of, &c., of the other part (*Recite mortgage to A. B., &c., for £10,000*): AND WHEREAS the sum of £2,000 (part of the sum of £10,000 expressed to be paid by the said A. B., C. D., E. F., and G. H., in and by the said indenture) was the proper money of the said I. K.: NOW THIS INDENTURE WITNESSETH, that in consideration of the premises, IT IS HEREBY DECLARED AND AGREED, that the said A. B., C. D., E. F., and G. H., shall stand possessed of and interested in the sum of £2,000 (part of the said principal sum of £10,000 secured by the hereinbefore recited indenture), and the interest of the said sum of £2,000, in trust for the said I. K., absolutely, and so that as between the said sum of £2,000 and the interest thereof, and the residue of the said sum of £10,000 and the interest thereof, there shall be no preference or priority.

IN WITNESS, &c.

No. XLVIII.

DECLARATION of TRUST of PART of a SUM OF MONEY
*secured on a CONTRIBUTORY MORTGAGE (a more special
 form).*

OF PART OF
 MONEY
 SECURED ON
 CONTRIBUTORY
 MORTGAGE.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c., C. D., of, &c., E. F., of, &c., and G. H., of, &c. (*mortgagees*), (hereinafter called the said mortgagees), of the one part, and I. K., of, &c., and L. M., of, &c. (*one set of contributories being trustees*), of the other part (*Recite mortgage for £10,000 containing a provision for reducing rate of interest if punctually paid*): AND WHEREAS the sum of £10,000 so expressed to be paid by the said mortgagees was not the proper moneys of the said mortgagees, but was advanced or contributed by several persons or classes of persons in various amounts and to the intent that the same might be invested by the said mortgagees on the security so made to them as aforesaid: AND WHEREAS the sum of £2,000, part of the said sum of £10,000, was advanced or contributed by the said I. K. and L. M., as the said mortgagees do hereby admit, and the said mortgagees have agreed to execute such declaration of trust in favour of the said I. K. and L. M., as is hereinafter contained: AND WHEREAS the said mortgagees have executed or are about to execute similar declarations of trust in favour of the other persons or classes of persons by whom the remainder of the said sum of £10,000 was advanced or contributed as aforesaid: NOW THIS INDENTURE WITNESSETH, that the said mortgagees do hereby declare and agree to and with the said I. K. and L. M. that they, the said mortgagees, shall stand and be possessed of and interested in the sum of £2,000 (part of the said sum of £10,000 secured as hereinbefore is mentioned), and of and in a proportionate part of the interest of the said sum of £10,000, and (to the extent of the said sum of £2,000 and interest) of and in the mortgages and other securities for the said sum of £10,000, and the interest thereof, Upon trust for the said I. K. and L. M., as joint tenants, but *pari passu* with and without any preference or priority to or over the several contributories of the sum of

Recite that mortgage money was contributed by various persons.

That part was contributed by persons named.

That mortgagees have given similar declarations to other contributories.

Declaration by mortgagees that they will hold part of the mortgage debt in trust for above-named persons.

OF PART OF
MONEY
SECURED ON
CONTRIBUTORY
MORTGAGE.

Proviso for
indemnity of
mortgagees.

Power for
mortgagees to
consent to
exercise of
powers con-
ferred on
mortgagor by
settlement,

and to release
part of mort-
gaged prop-
erty.

£8,000, the residue of the said sum of £10,000, in respect of their several parts or proportions of the said residue, or of the interest thereof: PROVIDED ALWAYS that the said mortgagees, their executors, administrators, or assigns, shall not be answerable or accountable to the said I. K. and L. M., their executors, administrators, or assigns, for any defect or insufficiency of the said securities, or for omitting or neglecting until required so to do by the said I. K. and L. M., their executors, administrators, or assigns, to call in or require payment of the said sum of £10,000, or any part thereof, or to enforce the securities for the same, or any of them, notwithstanding the time for the payment thereof shall have arrived or have passed, nor for accepting interest on the said sum of £10,000 at the said reduced rate of £4 per cent. per annum, notwithstanding such interest may not be paid at or within the time for that purpose appointed by the said indenture of mortgage: PROVIDED ALSO that the said mortgagees, their executors, administrators, or assigns, shall be at liberty at any time and from time to time during the continuance of the said security, if they shall think fit and shall be so advised by counsel, and without any further consent on the part of the said I. K. and L. M., their executors, administrators, or assigns, to concur with the said — (*the mortgagor*), or with other the person or persons for the time being competent in that behalf in the exercise of all or any of the powers of enfranchising, making partition, sale, exchange, leasing, and other powers contained in or referred to by indentures dated, &c., by which indentures the manor and other hereditaments charged with the said sum of £10,000 and commonly called "The C. Estate," were resettled subject to the same debt or to some part thereof upon such terms as the said mortgagees, their executors, administrators, or assigns, shall deem reasonable and expedient, and to release from the said debt of £10,000, or any part thereof, any part of the hereditaments for the time being charged therewith, or with any part thereof, on being satisfied that the other or remaining part of the said hereditaments for the time being charged therewith are of themselves a sufficient security for the same, or on other hereditaments being substituted for the released hereditaments, or some of them.

IN WITNESS, &c.

No. XLIX.

MORTGAGE of LANDS under the TRUSTS of a TERM for
 SECURING younger CHILDREN'S PORTIONS, where neither
 the PORTIONISTS nor the FREEHOLDER CONCUR (a).

MORTGAGE FOR
 TERM
 TO SECURE
 YOUNGER
 CHILDREN'S
 PORTIONS.

THIS INDENTURE, made the — day of —, BETWEEN
 A. B., of, &c., and C. D., of, &c. (*trustees of term for securing
 portions*), of the one part, and E. F., of, &c. (*mortgagee*), of the
 other part: WHEREAS (*Recite settlement whereby certain here-
 ditaments were conveyed to use of husband for life, remainder to
 uses to secure jointure for wife, remainder to the said A. B. and
 C. D. for 1,000 years, and subject thereto to use of the sons
 successively in tail,—trusts of term of 1,000 years for A. B. and
 C. D. to raise by mortgage thereof £4,000 for younger children's
 portions*): AND WHEREAS the said (*husband*) died on the — day
 of — without having exercised the power of appointment
 given to him by the said indenture of settlement as aforesaid in
 respect of the said sum of £4,000: AND WHEREAS there are four
 younger children of the said marriage, and each of them has
 attained the age of twenty-one years, so that the said sum of
 £4,000 is now payable to and divisible between such younger
 children equally: AND WHEREAS no part of the said sum of £4,000
 has yet been raised: AND WHEREAS the said A. B. and C. D.,
 pursuant to the trust for this purpose contained in the said recited
 indenture, have applied to the said E. F. to advance to them the
 sum of £4,000 for the purpose of satisfying the said portions
 which he the said E. F. has agreed to do upon having the repay-
 ment thereof, with interest, secured to him in the manner herein-
 after expressed: NOW THIS INDENTURE WITNESSETH,

Parties.

Death of hus-
 band without
 having exe-
 cuted power.

That there are
 four younger
 children who
 have attained
 vested interests
 in their por-
 tions.

Agreement to
 mortgage to
 raise same.

Witnessing
 part.

(a) On a mortgage of land under the trusts of a term to raise portions for younger children, it is desirable, as a general rule, to make the portionists parties; but if the trusts are in the general form, their concurrence is not absolutely essential, and therefore where it cannot conveniently be obtained, it may be and often is dispensed with.

Where the tenant of the freehold is *sui juris*, he generally consents to join in the mortgage, and to covenant either for payment of the principal and interest, or of the interest only, by way of collateral security; but if he is a minor, or refuses to join, the mortgagee must remain satisfied with the security of the land.

MORTGAGE FOR TERM TO SECURE YOUNGER CHILDREN'S PORTIONS. that in consideration of the sum of £4,000 paid by the said E. F. to the said A. B. and C. D. for the purpose aforesaid, on or before the execution of these presents (*the receipt, &c.*), they the said A. B. and C. D., as trustees, in execution of the trust for this purpose reposed in them by the said indenture, hereby assign unto the said E. F., ALL, &c. (*parcels*): To HOLD the same unto the said E. F., for all the residue now unexpired of the said term of 1,000 years, created by the said recited indenture of the — day of —: PROVIDED ALWAYS, that if the person or persons for the time being entitled to the premises hereby assigned in remainder immediately expectant on the said term of 1000 years, shall on the — day of — next, pay to the said E. F. the sum of £4,000, with interest for the same after the rate of £— per cent. per annum, computed from the date of these presents, then and in such case the assignment hereby made shall be void.

IN WITNESS, &c.

No. L.

TO RAISE PORTIONS WITH CONCURRENCE OF TENANT FOR LIFE, ETC.

MORTGAGE *by TRUSTEES of a TERM for RAISING PORTIONS with the CONCURRENCE of the PORTIONISTS, and also of the TENANT FOR LIFE, under a re-settlement of the estates, who COVENANTS to KEEP DOWN the interest.*

Parties. THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c., and C. D., of, &c. (*trustees of term*), of the first part, E. F., of, &c. (*tenant for life*), of the second part, G. H., of, &c., I. K., of, &c., and L. M., of, &c. (*portionists*), of the third part, and N. O., of, &c. (*mortgagee*), of the fourth part

Recitals. (*recite settlement on marriage of X. Y. with Z. whereby estates were limited to use of X. Y. for life, with remainder that Z. should receive a jointure, with usual powers, with remainder to A. B. and C. D. for 1000 years, upon trust to raise £10,000 as portions for younger children, and also the costs attending the raising of the same, with remainder to use of first and other sons of X. Y. and Z. in tail*

male—that there were issue of said marriage E. F., the eldest son, and G. H., I. K., and L. M., younger children—that E. F. attained twenty-one, and re-settlement of estates, whereby E. F.'s estate tail is cut down to an estate for life, with remainders over :—death of X. Y.—that G. H., I. K., and L. M. attained twenty-one in lifetime of X. Y.) : AND WHEREAS, the said G. H., I. K., and L. M., having required the said A. B. and C. D. to raise and pay to them the sum of £10,000 by the said indenture of the — day of — directed to be raised for the portions of younger children as aforesaid, the said A. B. and C. D. have applied to the said N. O. to advance the said sum of £10,000 for the purpose aforesaid, and also the further sum of £— for the purpose of paying the costs and expenses of, and incidental to, the raising of the said portions, which the said N. O. has agreed to do, upon having the repayment of the said several sums of £10,000 and £—, making together the sum of £—, with interest for the same, secured by an assignment, by way of mortgage, of the hereditaments comprised in the said term of 1000 years, and upon having the interest thereon further secured by the covenant of the said E. F. in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—, paid by the said N. O. to the said A. B. and C. D. for the purposes aforesaid, on or before the execution of these presents, with the consent and approbation of the said G. H., I. K., and L. M. (*the receipt, &c.*), they the said A. B. and C. D., as trustees, in execution of the trust for this purpose reposed in them by the said recited indenture of the — day of — as aforesaid, hereby assign, and the said E. F., as beneficial owner, hereby confirms unto the said N. O., ALL, &c. (*parcels*) : To HOLD the same unto the said N. O., for all the residue now unexpired of the said term of 1000 years granted by the said indenture of the — day of —, as hereinbefore is mentioned, without impeachment of waste, subject to the annual sum or yearly rent-charge of £—, by the same indenture limited to the said Z. during her life as aforesaid, and the powers and remedies for enforcing payment thereof : PROVIDED ALWAYS that if the said E. F., or other the person or persons for the time being entitled to the hereditaments and premises hereby assigned in remainder immediately expectant on the said term, shall on the — day of — next, pay to the

TO RAISE PORTIONS WITH CONCURRENCE OF TENANT FOR LIFE, ETC.

Agreement for loan.

Witnessing part.
Consideration.

Trustees of term assign and tenant for life confirms to mortgagee for residue of term.

Proviso for redemption.

TO RAISE PORTIONS WITH CONCURRENCE OF TENANT FOR LIFE, ETC.

Covenant by tenant for life to keep down the interest.

said N. O. the sum of £——, with interest for the same after the rate of £—— per cent. per annum, computed from the date of these presents, then and in such case the assignment hereby made shall be void: AND THE SAID E. F. hereby covenants with the said N. O., that he the said E. F. will during his life pay the interest to accrue due on the said principal sum of £——, or on so much thereof as shall for the time being remain owing on the security of these presents, by equal half-yearly payments on the —— day of ——, and the —— day of —— in every year.

IN WITNESS, &c.

No. LI.

TO RAISE PART OF PORTION UNDER POWER OF ADVANCEMENT.

MORTGAGE *by TRUSTEES of a TERM, with the concurrence of the TENANT FOR LIFE, for the purpose of RAISING a PART of the EXPECTANT PORTION of a YOUNGER SON, for his ADVANCEMENT.*

Parties.

Recite settlement.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c., and C. D., of, &c. (*trustees of the term*), of the first part, E. F., of, &c. (*tenant for life*), of the second part, and G. H., of, &c. (*mortgagee*), of the third part: WHEREAS by an indenture, &c., the manor and other hereditaments therein particularly described (of which the hereditaments intended to be hereby demised form part) were limited and assured from and after the solemnization of the said then intended marriage, To the use of the said E. F. and his assigns during his life, without impeachment of waste, with remainder (subject to a yearly rent-charge limited to the said —— which has determined by her death) to the use of the said A. B. and C. D., their executors, administrators, and assigns, for the term of 1000 years, computed from the day of the decease of the said E. F., without impeachment of waste, upon trust that if, &c. (*trusts for raising portions for younger children after the decease of E. F., or during his life, with his consent in writing, and power to trustees with consent*

of E. F. to raise a moiety of the expectant portion of any child for his advancement): AND WHEREAS the said —, the wife of the said E. F., died on the — day of —: AND WHEREAS there are issue of the said E. F. by the said —, his late wife, L. F., their eldest son, and three younger sons, and two daughters, all of whom are under the age of twenty-one years: AND WHEREAS M. F. is one of such younger sons, and he is now of the age of eighteen years, or thereabouts: AND WHEREAS the said E. F. is desirous of purchasing a commission in the army for the said M. F., and hath requested the said A. B. and C. D. to raise, under the trusts of the said term of 1000 years, the sum of £—, to be applied in the purchase of such commission, and for the outfit of the said M. F., or otherwise for his advancement and benefit: AND WHEREAS the said G. H. has agreed to advance to the said A. B. and C. D. the sum of £— for the purpose aforesaid, upon having the payment thereof, with interest, secured to him in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—, paid by the said G. H. to the said A. B. and C. D. on or before the execution of these presents, by the direction of the said E. F., and which sum of £— is intended to be applied by the said A. B. and C. D. for the advancement of the said M. F. in manner aforesaid (*the receipt, &c.*), they the said A. B. and C. D. as trustees hereby demise unto the said G. H., ALL, &c. (*parcels*): To HOLD the same unto the said G. H. for the said term of 1000 years, computed from the day of the decease of the said E. F., and so as aforesaid created by the said recited indenture of the — day of — (except the last ten days of the said term), without impeachment of waste: AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said E. F., as beneficial owner, doth hereby demise unto the said G. H., THE SAID PIECES OR PARCELS of land, and other the hereditaments hereinbefore described and expressed to be demised for the said term of 1000 years, except the last ten days of the said term as aforesaid: To HOLD the same unto the said G. H., for the term of ninety-nine years, computed from the day of the date of these presents, if the said E. F. shall so long live, without impeachment of waste: PROVIDED ALWAYS, that if the said E. F., or other the person or persons for the time being entitled to

TO RAISE PART
OF PORTION
UNDER POWER
OF ADVANCE-
MENT.

Death of
settlor's wife.
Issue of
marriage.

That tenant
for life is
desirous to
purchase com-
mission for
younger son.

Agreement
to advance
money.

Witnessing
part.
Consideration.

Trustees
demise
to mortgagee
for 1,000
years, wanting
ten days.

Second wit-
nessing part.
Tenant for life
demises

to mortgagee
for 99 years, if
he should so
long live.

Proviso for
redemption.

TO RAISE PART
OF PORTION
UNDER POWER
OF ADVANCE-
MENT.

Covenant by
tenant for life
to pay prin-
cipal and
interest.
Declaration as
to order of
liability.

the hereditaments and premises hereby demised, in remainder expectant on the said term of 1000 years, shall, on the — day of — next, pay to the said G. H., the sum of £—, with interest for the same after the rate of £— per cent. per annum, computed from the date of these presents, then and in such case these presents and the several demises hereby made shall cease, and be void (*Covenant by E. F. to pay principal and interest, supra*, p. 531); PROVIDED ALWAYS, and it is hereby declared, that as between the said E. F. on the one hand, and the hereditaments and premises hereby demised on the other hand, the said E. F., and his estate and effects, shall be liable during his life to keep down the interest on the said principal sum of £—, in exoneration of the said hereditaments and premises, and the said hereditaments shall be charged with, and liable to, the payment of the said principal sum of £—, in exoneration of the said E. F. and his estate and effects: but this present proviso shall not in anywise affect the said G. H., or his right to resort to his several securities in such order and manner as he or they shall think fit.

IN WITNESS, &c.

No. LII.

MORTGAGE BY
A BUILDER OF
UNFINISHED
HOUSES.

MORTGAGE by Assignment of PREMISES comprised in a BUILDING LEASE to secure the repayment of Sums advanced and to be advanced to the LESSEE for the purpose of enabling him to complete SEVERAL HOUSES which are unfinished.

Parties.

Recite sum
already ex-
pended by
mortgagor
in building.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*mortgagor*), of the one part, and C. D., of, &c. (*mortgagee*), of the other part (*Recite building lease to A. B.*): AND WHEREAS pursuant to the covenant for this purpose contained in the said recited indenture of lease, the said A. B. hath already laid out and expended the sum of £— in erecting

buildings on the said piece or parcel of ground in the said indenture comprised: AND WHEREAS the said A. B., having occasion for the sum of £—— for the purpose of enabling him to complete the erections and buildings intended to be erected on the said piece or parcel of ground pursuant to the aforesaid covenant as aforesaid, hath applied to and requested the said C. D. to lend him the same, which he the said C. D. hath agreed to do in two separate sums, that is to say, the sum of £—— immediately before the execution of these presents, and the sum of £——, when and so soon as all the erections and buildings already built, and to be erected and built, pursuant to the aforesaid covenant of the said A. B. as aforesaid, shall have been covered in, on having the said several sums of £—— and £——, with interest thereon respectively, secured in manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. paid by the said C. D. on or before the execution of these presents (*the receipt, &c.*), and in consideration of the covenant hereinafter contained on the part of the said C. D., the said A. B. hereby covenants with the said C. D. to pay to him, on the —— day of —— next, the sum of £——, with interest thereon after the rate of £—— per cent. per annum, computed from the date of these presents: AND ALSO to repay to him the money which shall be hereafter advanced by him to the said A. B. pursuant to the covenant in that behalf hereinafter contained on the —— day of ——, or the —— day of ——, which shall first happen after the date of the said advance, with interest thereon after the rate aforesaid, computed from the date of the said advance: AND ALSO if and so long as any principal money shall remain unpaid after the day hereby appointed for payment thereof, to pay interest thereon by equal half-yearly payments on the —— day of —— and the —— day of ——; AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B., as beneficial owner, hereby assigns unto the said C. D. ALL AND SINGULAR the piece or parcel of ground, hereditaments, and premises comprised in and demised by the said recited indenture of lease, and also all erections and buildings which have been erected and are now standing on the said premises: To HOLD the same unto the said C. D. for all the residue now unexpired of the said term of

MORTGAGE BY
A BUILDER OF
UNFINISHED
HOUSES.

Occasion on
which further
sum will be
advanced by
mortgagee.

Covenant by
mortgagor to
repay sum now
advanced, and
further sum
when ad-
vanced,

and to pay
interest
half-yearly.

Assignment of
premises

to mortgagee
for residue of
term.

**MORTGAGE BY
A BUILDER OF
UNFINISHED
HOUSES.**

Proviso for
redemption.

Covenant by
mortgagor to
complete
buildings,

and that if
default is
made by him,
mortgagee
may finish
them.

Premises in
such case to be
a security for
moneys
expended by
mortgagee, as
well as other
moneys.

Covenant by
mortgagee to
advance fur-
ther sum on
buildings
being covered
in.

ninety-nine years created by the said recited indenture of lease: PROVIDED ALWAYS, that if the principal sums hereinbefore covenanted to be paid shall be paid at the times hereinbefore appointed for payment thereof, then and in such case the said premises shall, at the request and cost of the said A. B., his executors, administrators, or assigns, be re-assigned to him or them; AND THE SAID A. B. hereby covenants with the said C. D., that he the said A. B. will, before the — day of —, fully and completely finish the erections and buildings hereby assigned, and all other the erections and buildings which are to be erected and built on the said piece of ground pursuant to the covenant for this purpose entered into by the said A. B. by the said recited indenture of lease as therein mentioned, and that in case default in this respect shall be made by the said A. B., then it shall be lawful for the said C. D., his executors, administrators, or assigns, to enter upon and into the said premises hereby assigned, and to complete the same erections and buildings, and any other erections and buildings which ought to be built on the said piece or parcel of ground pursuant to the aforesaid covenant, in such manner as he or they may think proper, and that all sums of money which he or they shall expend thereon, with interest thereon after the rate aforesaid from the time or respective times of expending the same, shall be repaid to him or them on demand by the said A. B., and shall in the meantime be charged on the premises hereby assigned, in addition to the other moneys hereby secured (*Covenant by A. B. to insure against fire, supra*, p. 532): AND THE SAID C. D. hereby covenants with the said A. B. that when and so soon as all the erections and buildings already erected and to be erected pursuant to the covenant for that purpose contained in the said recited indenture of lease shall be covered in, and if up to that time all the covenants hereinbefore contained on the part of the said A. B. (other than the covenant for payment of the said principal sum of £— on the — day of — next) shall have been duly kept and performed, he the said C. D. will advance to the said A. B. the further sum of £—, at interest after the rate aforesaid, on the security of these presents. (*Declaration as to leasing power if desired, supra*, p. 532.)

IN WITNESS, &c.

No. LIII.

MORTGAGE *by a BUILDER of LAND comprised in an AGREEMENT entitling him to SEPARATE LEASES from the FREEHOLDER as the houses are completed, to secure ADVANCES to be made for the purpose of enabling him to complete the houses.*

BY A BUILDER
OF LAND
COMPRISED IN
AGREEMENT.

THIS INDENTURE, made the — day of —, BETWEEN Parties.
A. B., of, &c. (*mortgagor*), of the one part, and C. D., of, &c. (*mortgagee*), of the other part: WHEREAS (*Recite agreement between freeholder and builder, whereby builder agrees to build houses on a plot of land and freeholder agrees to grant a separate lease of each house when completed*): AND WHEREAS the said C. D. Agreement for loan.
has agreed to make advances of money to the said A. B. from time to time in order to enable him to complete the houses and buildings on the said plot of land pursuant to the said recited agreement, upon having the repayment thereof with interest secured in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, as follows:—

1. THE said C. D. (hereinafter called "the mortgagee") hereby covenants with the said A. B. (hereinafter called "the mortgagor"), that he the mortgagee will advance and lend to the mortgagor such sums of money as are next hereinafter mentioned (that is to say) the sum of £—— immediately on the execution of these presents, and for and in respect of each house built by the mortgagor on the plot of land comprised in the said recited agreement pursuant to the same agreement, the further sum of £——, one moiety thereof to be advanced and lent as and when each such house shall be covered in, and the other moiety thereof as and when the same house shall be completed, so as to be fit for habitation: PROVIDED ALWAYS that the mortgagee shall not be bound to make any such advance as aforesaid, unless and until his surveyor shall have certified in writing that the house in respect of which the advance is to be made has been covered in or completed (as the case may be) to the satisfaction of such surveyor and in conformity with the said recited agreement, and the fee of the surveyor for inspecting

Mortgagee covenants to make advances as each house is covered in and completed.

Proviso that mortgagee need not make advance until surveyor has certified that house has been properly built, &c.,

BY A BUILDER
OF LAND
COMPRISED IN
AGREEMENT.

nor unless
mortgagor has
paid interest
punctually and
observed his
covenants.

Mortgagor
covenants to
repay advances
at the end of
six months,

and to pay
interest half-
yearly.

Mortgagor
assigns plot of
land to mort-
gagee, subject
to proviso for
redemption on
payment of
principal
money and
interest.

Covenant by
mortgagor to
insure against
fire,

and deliver
receipts for
premiums to
mortgagee.
Power to
mortgagee to
insure in case
of mort-

the house and certifying as aforesaid (not exceeding in amount £——) shall be paid by the mortgagor: PROVIDED ALSO that the mortgagee shall not be bound to make any such advance as aforesaid, unless up to the time when such advance ought to be made under the foregoing covenant the mortgagor shall have duly paid the interest on the principal money for the time being owing on this security on the half-yearly day hereinafter appointed for payment of such interest, or within fourteen days thereafter, and shall have duly observed all the covenants hereinafter, on the mortgagor's part, contained (other than the covenant contained in Article 2).

2. IN consideration of the advances to be made as aforesaid, the mortgagor hereby covenants with the mortgagee that he the mortgagor will repay to the mortgagee every sum of money advanced by him pursuant to Article 1 at the expiration of six calendar months from the time of such advance, with interest thereon computed from the time of such advance, after the rate of £—— per cent. per annum; and if the same shall not be repaid at the expiration of the said six calendar months will thenceforth pay to the mortgagee interest thereon after the rate aforesaid by equal half-yearly payments on the —— day of ——, and the —— day of —— in every year, until the said principal sum shall be fully repaid.

3. THE mortgagor, as beneficial owner, hereby assigns unto the mortgagee THE plot of ground comprised in the said recited agreement, and the benefit of the said agreement in relation thereto, TO HOLD the same unto the mortgagee: PROVIDED ALWAYS that the mortgagor shall, at his own expense, have a reassignment of the said premises, if he shall pay all moneys advanced to him by the mortgagee with interest thereon at the expiration of six calendar months from the times when the same shall be advanced pursuant to Article 2.

4. THE mortgagor hereby covenants with the mortgagee that he the mortgagor will keep insured the buildings for the time being on the said plot of land in a sum equal to two-thirds of the value thereof: AND will deliver to the mortgagee the receipt for every premium payable in respect of such insurance within seven days after it shall become due: AND if the mortgagor shall fail to keep the said buildings insured as aforesaid, then the mortgagee may insure the same in such sum as he may

think fit, and all moneys expended by him in or about such insurance, with interest thereon after the rate aforesaid, computed from the time of expending the same, shall be repaid to the mortgagee by the mortgagor on demand, and shall in the meantime be a charge on the said premises in addition to the other moneys hereby secured: AND all moneys received in respect of any such insurance shall be applied in rebuilding or reinstating the premises in respect whereof the same shall be received.

BY A BUILDER
OF LAND
COMPRISED IN
AGREEMENT.

gagor's
default,
and to add
expense of so
doing to the
mortgage debt.

5. THE mortgagor hereby further covenants with the mortgagee that he the mortgagor will erect and complete the ——— houses by the said recited agreement agreed to be built by him on the said plot of ground at the times and in the manner mentioned in that behalf in the said agreement, and will pay the rent made payable by the said agreement, and observe and perform the said agreement in all respects.

Mortgagor
covenants to
build accord-
ing to agree-
ment, and to
observe agree-
ment.

6. If the mortgagor shall make default in the repayment of any principal money hereby secured for the space of one calendar month after payment thereof shall have been demanded, or shall make default in any half-yearly payment of interest payable under these presents, or any part thereof, for the space of fourteen days after the day hereby appointed for such payment, or shall commit any breach of any of the covenants herein on his part contained (other than the covenant contained in Article 2), or shall become bankrupt or die during the continuance of this security, then and in any of such cases the mortgagee may at any time thereafter enter into and upon and take possession of the plot of land hereby assigned, and complete any houses or buildings thereon which may be unfinished in such manner as he may think fit, and add the money expended in so doing with interest thereon after the rate aforesaid, computed from the time of expending the same, to the other principal moneys and interest hereby secured, so as to be an additional charge on the said premises: AND the mortgagee may also sell the said plot of ground and the houses and buildings thereon, or any part thereof, either together or in lots, and so that every such sale may be either by public auction or private contract, and the mortgagee may buy in at sales by auction and rescind contracts for sale and resell without being answerable for any loss arising thereby, and may execute

Power to
mortgagee in
certain cases
to enter and
complete
buildings,

and to sell.

BY A BUILDER
OF LAND
COMPRISED IN
AGREEMENT.

assurances, give valid receipts for the purchase-money, and do all other acts and things which he may think fit for carrying into effect and completing any such sale: And the mortgagee shall, with and out of the moneys to arise from any such sale, in the first place pay the costs and expenses incurred in or about such sale or otherwise in relation to this security, and in the next place pay the moneys then owing on this security, and pay the surplus (if any) to the mortgagor.

Purchaser not
bound to in-
quire whether
any case
authorizing
a sale has
happened.

7. No purchaser upon any such sale as aforesaid shall be bound or concerned to see whether any of the cases have happened in which such sale is hereby authorized to be made or otherwise as to the propriety of such sale, or be affected by notice that no such case has happened or that the sale is otherwise improper.

How demand
may be made.

8. ANY demand for payment of the money hereby secured may be made by a notice in writing given to the mortgagor or to one of his executors or administrators, or left at his usual or last known place of abode or business, or left upon or affixed to any part of the land comprised in the said agreement, or any building thereon.

Mortgagor
covenants to
procure leases
from free-
holder, and to
execute mort-
gages to mort-
gagees of pre-
mises com-
prised in
leases.

9. THE mortgagor hereby further covenants with the mortgagee that he the mortgagor will, at his own expense, procure from the said — (*the freeholder*), a separate lease of each of the said houses when and so soon as such lease can be required in accordance with the said recited agreement, and will procure such lease to be granted either to the mortgagor or to the mortgagee as the mortgagee may determine, and in case such lease shall be granted to the mortgagor then will forthwith make and execute to the mortgagee a valid and effectual mortgage of the premises comprised in such lease, either by way of assignment or underlease, for the purpose of securing the money which shall then be owing to the mortgagee upon this security, or such part of the said money as the mortgagee may think fit to allocate to the premises comprised in that particular lease, with interest thereon after the rate aforesaid: And every such mortgage shall contain such powers and provisions as the mortgagee shall reasonably require.

Operation of
words "mort-
gagor" and
"mortgagee."

10. THE expressions "the mortgagor" and "the mortgagee" used in these presents include (besides the said A. B. and C. D.) all persons deriving title under them respectively, except where

the context may require a different construction. (*Declaration as to leasing power if desired, supra, p. 532.*)

IN WITNESS, &c.

BY A BUILDERS
OF LAND
COMPRISED IN
AGREEMENT.

No. LIV.

APPOINTMENT *under the STATUTORY POWER of a RECEIVER of the RENTS of FREEHOLD and LEASEHOLD PROPERTY comprised in a MORTGAGE.*

APPOINTMENT
OF RECEIVER.

WHEREAS by an indenture dated, &c., and made between X. Y., of, &c., of the one part, and me, of the other part, certain freehold and leasehold messuages, lands, and hereditaments, situate in the parish of —, in the county of —, therein particularly described, were conveyed and demised by the said X. Y. to me, in fee simple as to the said freeholds, and as to the said leaseholds for the unexpired residue of the term of — years subsisting therein, except the last day thereof, by way of mortgage, for securing payment of the sum of £—, on the — day of — then next, with interest thereon after the rate of £— per cent. per annum: AND WHEREAS the principal money secured by the said indenture remains owing, and the interest thereon has been in arrear for more than two months; NOW I, the undersigned A. B., in pursuance of the power for this purpose given to me by section 24 of the Conveyancing and Law of Property Act, 1881, and of all other powers (if any) me hereunto enabling, do hereby appoint C. D., of, &c., to be the receiver of the rents and income of all the freehold and leasehold property comprised in the said mortgage, with all the powers conferred on a Receiver by the said Act, and to the intent that he shall apply all moneys received by him in the manner directed by sub-section 6 of section 24 of the said Act, and I authorize the said C. D. to retain for his remuneration, and in satisfaction of all costs, charges, and expenses incurred by him as Receiver, a commission of — per cent. on the gross amount of all money received by him, and I direct him to keep the

Recital of
mortgage.

That principal
money is due
and interest
in arrear.

Appointment
of receiver.

Authority to
retain commis-
sion,

and to insure
buildings
against fire.

APPOINTMENT
OF RECEIVER.

buildings on the said premises insured against loss or damage by fire in the — Insurance Office.

As WITNESS my hand this — day of — 188—.

(Signed) A. B.

No. LV.

WITH EXTEN-
SION OF STATU-
TORY POWER
TO GRANT
MINING
LEASES.

MORTGAGE with PROVISION extending STATUTORY POWER of LEASING to MINING LEASES, and PROVISION that LEASES shall be APPROVED by MORTGAGEE'S SOLICITOR.

Declaration that s. 18 of Conveyancing Act shall be extended so as to authorize mining leases.

THIS INDENTURE, &c. (same as No. 1, omitting declaration as to leasing power, adding at the end the following provision):

AND IT IS HEREBY DECLARED that the power of leasing conferred by section 18 of the Conveyancing and Law of Property Act, 1881, shall be extended so that the person or persons in whom that power shall for the time being be vested may grant (in addition to the leases thereby authorized) a mining lease or mining leases of any part of the mortgaged hereditaments for any term not exceeding sixty years, and for this purpose the term "mining lease" shall have the same meaning as is assigned thereto by section 2, sub-section 10 of the Settled Land Act, 1882, and any rent may be reserved on a mining lease under the power hereby conferred, which by virtue of section 9 of the Settled Land Act, 1882, might be reserved on any mining lease under that Act (a): AND IT IS ALSO DECLARED that with a view to enable the person or persons aforesaid to grant leases under the statutory power as hereby extended he or they may accept the surrender of any lease now existing, or which hereafter may be granted, of any property proposed to be comprised in the new lease: PROVIDED ALWAYS that no lease shall be granted

Power to accept surrender of existing leases.

All leases under statu-

(a) Sub-sects. 4—8, 11, 12, of sect. 18, of the Conveyancing Act, will apply to a mining lease. See sub-sect. 14, which provides that "any further powers so reserved or conferred shall be exercisable so far as may be as if they were conferred by this Act, and with all the like incidents, effects, and consequences."

by the mortgagor under the statutory power as hereby extended unless the same shall have been first perused and approved of by the solicitor or solicitors of the mortgagee at the expense of the mortgagor, and such perusal and approval shall be deemed to be sufficiently testified by a memorandum thereof endorsed on the lease or written at the foot of the draft or any copy of the lease, and signed by a person or firm professing to be the solicitor or solicitors of the mortgagee.

WITH EXTENSION OF STATUTORY POWER TO GRANT MINING LEASES.

tory power as extended to be approved by mortgagee's solicitor.

IN WITNESS, &c.

No. LVI.

MORTGAGE of a MINING PROPERTY, with provisions extending the STATUTORY POWERS of LEASING to MINING LEASES,—PROVISIONS for setting apart a PROPORTION of the RENTS and ROYALTIES payable under the MINING LEASES, and INVESTING same in the NAMES OF TRUSTEES to constitute a SINKING FUND in aid of the PRINCIPAL SECURITY.

OF MINING PROPERTY.

THIS INDENTURE, made the — day of —, BETWEEN Parties. A. B. of, &c. (*mortgagor*), of the first part, C. D. of, &c. (*mortgagee*), of the second part, and E. F. of, &c., and G. H. of, &c. (*trustees*), of the third part, WITNESSETH, that, &c. (*Conveyance by A. B. to C. D. in fee,—proviso for redemption—covenant to pay principal and interest, as in Precedent No. I., p. 531*): AND IT IS DECLARED, that upon any sale made by the said C. D., his executors, administrators, or assigns, under the statutory power in that behalf, the surface of any of the lands hereby conveyed may be sold without the mines thereunder, or the mines under any of the said lands may be sold without the surface of the same lands, and in either of the said cases there may be reserved to the vendor, or granted to the purchaser (as the case may require), such powers, privileges, and easements for the purpose of working the mines so reserved or conveyed, as the case may be, for getting and carrying away the produce thereof, or other-

On sales surface land, and mines thereunder, may be sold separately.

**OF MINING
PROPERTY.**

Power to grant
mining leases,
with powers
ancillary
thereto, for
sixty years.

wise in connection with the mines as may be thought desirable or convenient: AND IT IS ALSO DECLARED that in addition to the powers of leasing conferred on the mortgagor and mortgagee by section 18 of the Conveyancing and Law of Property Act, 1881, the person or persons in whom those powers shall for the time being be vested under that Act, shall have power also to lease all or any of the mines, minerals, and substances on or under, or otherwise forming part of the hereditaments hereby conveyed, and either with or without any houses or lands convenient to be held or occupied with the same, and either with or without the surface of any lands under which the same or any part thereof shall lie, and with such powers and privileges of working and getting the said mines and premises, and of stacking, depositing, and carrying away the produce thereof, and of converting such produce into cooke, bricks, or other articles or things, and of sinking, driving, erecting, constructing, and using pits, shafts, levels, drifts, airgates, watergates, furnaces, engines, machinery, houses for workmen, and other houses, buildings, sheds, canals, wharves, railways, waggon ways, and other ways, works, devices, and conveniences, and with all such other easements, rights, and privileges to be exercised in, over, upon, or under the hereditaments hereby conveyed or any part thereof, in connection with the mines and premises to be included in such lease as the person or persons for the time being exercising this power shall think fit; BUT so that every lease under this power shall be for a term not exceeding sixty years to take effect in possession, or within one year from the making thereof, and shall be at the best rent or rents, royalty or royalties, that can be reasonably obtained for the same, without taking anything in the nature of a fine or premium for the making thereof, and so also that every such lease shall contain a covenant by the lessee to pay the rents or royalties thereby reserved, and also a condition of re-entry on non-payment thereof, and so also that a counterpart of such lease be executed by the lessee: PROVIDED ALSO, and it is hereby declared, that with a view to enable the person or persons aforesaid, to grant leases under the said statutory powers and under the power hereinbefore contained, it shall be lawful for him or them, from time to time, to obtain the surrender or assignment of any lease now existing, or which may be hereafter created, either as to the whole or any part of the land

Power to
mortgagor to
accept sur-
renders of
leases.

comprised in the same lease: PROVIDED ALWAYS, and it is hereby agreed and declared, and in particular the said A. B. hereby covenants with the said C. D. that within one calendar month after the execution by the lessee of the counterpart of every or any lease which may be granted by the mortgagor under the said statutory powers or under the powers hereinbefore contained, every such counterpart shall be delivered to the solicitor or solicitors, or other person or persons who shall from time to time be appointed to take charge of the same by the said C. D., his executors, administrators, or assigns, AND THAT upon the delivery of every such counterpart, the sum of one guinea shall be paid by the said A. B., his heirs or assigns, to the solicitor or solicitors, or other person or persons appointed as aforesaid, as a fee for his or their trouble, in or about the accepting of the said counterparts, and giving such receipt or acknowledgment for the same as next hereinafter is mentioned, and the said solicitor or solicitors, or other person or persons to whom such counterpart shall be delivered as aforesaid, shall upon the request of the person or persons delivering the same, and paying the said fee of one guinea as aforesaid, give to him or them a receipt or acknowledgment in writing of such delivery, which receipt or acknowledgment shall be sufficient evidence of the due delivery of every or any counterpart therein expressed to have been so delivered: AND THE SAID A. B. hereby covenants with the said C. D., and also by way of separate covenant with the said E. F. and G. H. (hereinafter called "the trustees"), THAT whilst and so long as the rent or rents, royalties, tolls, and other payments reserved and made payable by any mining lease which shall have been granted by the said A. B., his heirs or assigns, under the power hereinbefore contained shall be received by the said A. B., his heirs or assigns, he the said A. B., his heirs or assigns, shall and will, immediately upon every receipt of the same rent or rents, royalties, tolls, or other payments respectively, pay one full third part thereof to the trustees, upon the trusts hereinafter declared concerning the same: AND IN ORDER to enable the trustees to ascertain from time to time the amount payable to them under the covenant lastly hereinbefore contained, he the said A. B., his heirs or assigns, will at all times make and deliver, or cause to be made and delivered to them, true and correct statements and accounts of the rents,

OF MINING
PROPERTY.

Covenants by mortgagor to deliver counterparts of leases to mortgagee's solicitor,

and pay a fee upon such delivery.

Covenant by mortgagor to pay one-third of rents, &c., received on mining leases to trustees;

and to make and deliver statement and accounts of such rents.

**OF MINING
PROPERTY.**

Trustees to stand possessed of moneys paid to them in respect of rents, &c.

Upon trust after paying expenses to invest same and accumulate at compound interest.

royalties, tolls, and other payments which shall from time to time become payable under the reservation of every or any such lease as aforesaid: AND IT IS HEREBY AGREED AND DECLARED, that the trustees shall with and out of the moneys paid to them as aforesaid, in the first place pay all the costs and expenses incurred by them, or by the said C. D., his heirs, executors, administrators, and assigns, in or about the obtaining payment and receiving of the said moneys, or otherwise in relation to the premises, and shall invest the residue of the said moneys in the names of the trustees in some or one of the modes of investment authorized by law for trust funds, with power from time to time to vary the said investments into or for others of the same or a like nature, but so that every such variation of investment be made with the consent of the said A. B., his executors, administrators, or assigns, and shall from time to time receive the annual income of the said trust fund, and invest the same, and the resulting income thereof in manner aforesaid, with a like power of varying the investment thereof, so as to accumulate at compound interest: AND in case default shall be made in payment of any principal money or interest hereby secured, at the respective times when the same respectively ought to be paid according to the true intent and meaning of these presents, then and in such case the trustees shall upon the request of the said C. D., his executors, administrators, or assigns (but not otherwise), sell, call in, and convert into money all or any part of the said trust fund, and apply the moneys arising therefrom, in the first place in payment of the costs and expenses attending such sale, calling in, and conversion, or otherwise incurred in relation to the premises, and in the next place in or towards satisfaction and discharge of the principal sum and interest then due and owing upon the security of these presents: AND IT IS HEREBY AGREED AND DECLARED, that subject to the trusts aforesaid, the trustees shall stand possessed of the said trust fund in trust for the said A. B., his executors, administrators, and assigns: AND it is hereby declared, that the power of appointing a new trustee in the place of the said E. F., or any trustee appointed in his place, shall be vested in the said A. B., his heirs or assigns, and the power of appointing a new trustee in the place of the said G. H., or any trustee appointed in his place, shall be vested in the said

C. D., his executors, administrators, or assigns: AND IT IS ALSO HEREBY DECLARED, that the said E. F. and G. H., and every future trustee who may be a solicitor, shall be entitled to be paid for all professional business done by them respectively in relation to the said trust funds and premises, in the same manner as if they respectively had not been trustees hereof. (*Declaration as to leasing power, supra, p. 532.*)

OF MINING
PROPERTY.

Trustees to be
entitled to
charge for
professional
business.

IN WITNESS, &c.

No. LVII.

CONVEYANCE of FREEHOLD LANDS by way of COL-
LATERAL SECURITY (a).

OF FREEHOLDS,
AS COLLATERAL
SECURITY.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*mortgagor*), of the one part, and C. D., of, &c. (*mortgagee*), of the other part: WHEREAS by an indenture bearing even date with, and made between the same persons as are made parties to these presents, in consideration of the sum of £5,000 paid by the said C. D. to the said A. B., the said A. B. has conveyed certain hereditaments situate in the parish of — in the county of —, therein particularly described, unto and to the use of the said C. D. in fee simple, by way of mortgage for securing the payment to him of the sum of £5,000, with interest for the same after the rate of £5 per cent. per annum, on the — day of — next: AND WHEREAS upon the treaty for the said loan of £5,000, it was agreed that the repayment thereof, with interest, should be secured as well by the said recited indenture of mortgage as by a mortgage of the hereditaments hereinafter described in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in con-

Parties.

Recite principal mortgage deed, &c.

Agreement for further security.

Witnessing part.

(a) It is sometimes desirable to keep the titles to two estates to be included in the same security distinct by having two separate deeds. The above precedent is adapted to such a case. The *ad valorem* stamp will be imposed on the principal mortgage deed; and this deed of collateral security will require only a stamp of 6d. for every £100 of the £5,000 secured.

OF FREEHOLDS,
AS COLLATERAL
SECURITY.

Mortgagor
conveys to
mortgagee in
fee.

Proviso for
redemption.

sideration of the sum of £5,000 so paid by the said C. D. to the said A. B. as aforesaid (the receipt whereof the said A. B. hereby acknowledges), the said A. B., as beneficial owner, hereby conveys, &c. (*Conveyance of parcels to mortgagee in fee, supra*, p. 531.) Subject to the proviso for redemption following (namely): PROVIDED ALWAYS, that if the said A. B. shall, on the — day of — next, pay to the said C. D. the said sum of £5,000 with interest for the same after the rate aforesaid, computed from the date of these presents, the said premises hereby conveyed shall, at the request and cost of the said A. B., his heirs or assigns, be re-conveyed to him or them. (*Declaration as to leasing power, if desired, supra*, p. 532.)

IN WITNESS, &c.

No. LVIII.

OF FREEHOLDS,
AS ADDITIONAL
SECURITY BY
INDORSEMENT.

CONVEYANCE of FREEHOLD LANDS by way of ADDITIONAL SECURITY—by INDORSEMENT on the PRINCIPAL MORTGAGE DEED (a).

Parties.

Recite that
mortgage
money
remains due.
Agreement
for further
security.

Witnessing
part.

Mortgagor
conveys fur-
ther property

THIS INDENTURE, made the — day of —, BETWEEN the within-named A. B. (*mortgagor*), of the one part, and the within-named C. D. (*mortgagee*), of the other part: WHEREAS the within-mentioned sum of £5,000 remains due and owing on the security of the within-written indenture: AND WHEREAS the said A. B. has agreed to convey the hereditaments hereinafter described unto the said C. D., by way of further security for the said principal sum and the interest for the same in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £5,000 so remaining owing as aforesaid, the said A. B., as beneficial owner, hereby conveys unto the said C. D. ALL, &c. (*parcels*): To HOLD the same unto and to the use of the said C. D., in fee simple,

(a) In this case the principal mortgage is supposed to have been made by a deed dated some time previously to the date of the additional security.

subject to such right or equity of redemption as the hereditaments comprised in the within-written indenture are now subject or liable to under the same indenture, and so that all the powers and provisions contained in the within-written indenture shall extend and be applicable to the hereditaments and premises hereby conveyed, in the same manner as if the said hereditaments and premises had been included in the said indenture. (*Declaration as to leasing power, if desired, supra*, p. 532.)

OF FREEHOLDS,
AS ADDITIONAL
SECURITY BY
INDORSEMENT.

to mortgagee,
subject to
right of
redemption.

IN WITNESS, &c.

No. LIX.

ASSIGNMENT of a POLICY of ASSURANCE by way of ADDITIONAL SECURITY.

OF POLICY, AS
ADDITIONAL
SECURITY.

THIS INDENTURE, made the — day of —, BETWEEN
A. B., of, &c. (*mortgagor*), of the one part, and C. D., of, &c.
(*mortgagee*), of the other part: WHEREAS by an indenture
dated, &c., and made, &c., certain policies of assurance effected
on the life of the said A. B. were assigned by the said A. B.
unto the said C. D., by way of mortgage, for securing the pay-
ment to the said C. D. of the sum of £3,000, with interest
thereon after the rate of £5 per cent. per annum: AND
WHEREAS the said sum of £3,000 is still owing on the
security of the said recited indenture: AND WHEREAS by a
policy of assurance, dated, &c., and numbered —, the
said A. B. has effected an assurance in his own name, on his
own life, with the — Society, in the sum of £—, under
the annual premium of £—: AND WHEREAS the said A. B.
has agreed to assign the said recited policy of assurance unto
the said C. D. by way of further security as hereinafter ex-
pressed: NOW THIS INDENTURE WITNESSETH, that
in consideration of the sum of £3,000 so remaining owing on
the security of the said indenture of mortgage as aforesaid, the
said A. B., as beneficial owner, hereby assigns unto the said
C. D., ALL THAT the hereinbefore recited policy of assurance,

Parties.

Recite mort-
gage of
policies.

That money
remains due.

That mort-
gagor has
effected a fur-
ther policy.

Agreement by
mortgagor to
assign further
policy.

Witnessing
part.

Mortgagor
assigns further
policy to mort-
gagee.

OF POLICY, AS
ADDITIONAL
SECURITY.

Proviso for
redemption.

Covenant by
mortgagor
that all the
covenants,
trusts, and
powers in
original mort-
gage shall ex-
tend to this
policy.

and the said sum of £—— thereby assured, and all other moneys, benefits, and advantages to be had, recovered, or obtained under or by virtue of the said policy: To HOLD the same unto the said C. D.: PROVIDED ALWAYS, that if the said A. B. shall, on the —— day of —— next, pay to the said C. D. the said sum of £3,000 owing on the security of the said indenture of mortgage as aforesaid, and all interest which shall be then due on account of the same sum, then the said policy, moneys, and premises hereby assigned shall at the request and cost of the said A. B. be reassigned to him: AND THE SAID A. B. hereby covenants with the said C. D., THAT all the covenants, powers, and provisions contained in the said recited indenture of mortgage shall extend, and be applicable to the policy, moneys, and premises hereby assigned, as if corresponding covenants, powers, and provisions had been expressly inserted in these presents: AND THAT in the event of any moneys being paid by the said C. D., his executors, administrators, or assigns, in discharge of any premiums or otherwise, on account of the said policy hereby assigned, or on account of any further or renewed policy in the place of the policy hereby assigned, or expressed so to be, by reason of the default of the said A. B. to pay such moneys, then the said policies and premises comprised in the said recited indenture of mortgage, and any further or renewed policy or policies in the place of the same policies, or any of them, shall, as well as the policy hereby assigned, and any such further or renewed policy in the place thereof as aforesaid, be charged with all such moneys as shall be so paid by the said C. D., his executors, administrators, or assigns, and with the interest thereof.

IN WITNESS, &c.

No. LX.

OF RAILWAY
SHARES.

Parties.

MORTGAGE of SHARES in a RAILWAY COMPANY.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*mortgagor*), of the one part, and C. D., of, &c.

(*mortgagee*), of the other part (*Recite agreement for loan, supra*, p. 542): AND WHEREAS, with a view to the said intended security, the said A. B. has by a deed (*a*) bearing even date with these presents, transferred unto the said C. D., twenty shares of £50 each, in the capital of the ——— Railway Company, which shares are numbered respectively (*state the Nos. of the shares*): NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B. (*Covenant to pay principal money and interest, supra*, p. 531): AND IT IS HEREBY AGREED AND DECLARED, that if the said sum of £——, with interest thereon, shall be paid to the said C. D., on the ——— day of ——— next, according to the foregoing covenant in that behalf, the said railway shares shall, at the request and cost of the said A. B., be re-transferred to him.

OF RAILWAY
SHARES.

Recite transfer
of railway
shares by
mortgagor to
mortgagee.

Declaration
that mort-
gagee shall
hold shares as
a security for
principal and
interest.

IN WITNESS, &c.

No. LXI.

MORTGAGE of a LEGACY.

OF A LEGACY.

THIS INDENTURE, made the ——— day of ———, BETWEEN Parties.
A. B., of, &c. (*mortgagor*), of the one part, and C. D., of, &c. (*mortgagee*), of the other part: WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B. hereby covenants, &c. (*Covenant to pay principal and interest, supra*, p. 531): And

(*a*) Under the Companies Clauses Consolidation Act (8 & 9 Vict. c. 16), a transfer of railway shares is to be kept by the secretary of the company, and the company is not bound to notice trusts express or implied. (Sects. 14, 15, 20.) It is, therefore, the most convenient plan upon a mortgage of railway shares for the mortgagor to make an absolute transfer of them to the mortgagee for a nominal consideration, according to the form in the schedule to the Act, accompanied by a deed explaining the object of the transfer as above. It will be born in mind that this species of mortgage gives to the mortgagee an absolute control over and power of dealing with the shares as they stand in his name only, and he will be the person to receive the dividends, but he may, by power of attorney or letter of direction, authorize the mortgagor to receive them. The power of sale conferred by the Conveyancing and Law of Property Act, 1881, is applicable to this species of property. Transfer of railway shares.

OF A LEGACY. **THIS INDENTURE ALSO WITNESSETH,** that for the consideration aforesaid, the said A. B., as beneficial owner, hereby assigns unto the said C. D., THE legacy of £— bequeathed to the said A. B., by the will of X. Y., late of, &c., which will is dated the — day of —, and was proved in the principal Probate Registry of the High Court of Justice on the — day of —, by L. M. and N. O., the executors thereof, and which legacy remains unpaid: To HOLD the same unto the said C. D.: UPON TRUST to receive the said legacy, and out of the same to pay in the first place the expenses attending the obtaining payment thereof, and in the next place to pay and retain the said sum of £—, and the interest thereof, or so much thereof (if any) as shall then remain due, and to pay the surplus (if any) of the said legacy to the said A. B.

Mortgagor
assigns legacy
to mortgagee,

upon trust to
apply same in
payment of
principal,
interest, and
costs, and to
pay surplus
to mortgagor.

IN WITNESS, &c.

No. LXII.

**BY TENANT FOR
LIFE UNDER
SETTLED LAND
ACT.**

MORTGAGE *by* **TENANT for LIFE, under section 18 of the SETTLED LAND ACT, 1882, to RAISE money for the ENFRANCHISEMENT of COPYHOLDS, or for EQUALITY of EXCHANGE or PARTITION (a).**

Parties.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*tenant for life*), of the first part, E. F., of, &c. and G. H., of, &c. (*trustees of the settlement*), of the second part, and C. D., of, &c. (*mortgagee*), of the third part:

(a) In this precedent it is supposed that the property mortgaged is not the same as is the subject of the enfranchisement, exchange, or partition. The mortgagor is not bound or concerned to see that the money advanced by him is actually wanted for the purpose for which it is expressed to be raised. (Sect. 40.)

**Power to raise
money for
costs.**

Sect. 18 does not in terms authorize the raising of money for costs in addition to the money payable for the enfranchisement, &c. But it is apprehended that such a power is implied. (See *Armstrong v. Armstrong*, L. R. 18 Eq. 541.) At all events the costs may be paid by the trustees out of any capital money in their hands. (Sect. 21(x).)

(*Recite settlement sufficiently to shew that A. B. is tenant for life, and E. F. and G. H. trustees with power of sale, and therefore trustees for the purposes of the Settled Land Act*):

BY TENANT FOR
LIFE UNDER
SETTLED LAND
ACT.

AND WHEREAS, under the power in that behalf contained in the Settled Land Act, 1882, the said A. B. has agreed with I. K., the lord of the manor of —, for the enfranchisement of certain copyhold tenements held of that manor and being part of the hereditaments settled by the said indenture [or has agreed to exchange part of the hereditaments settled by the said indenture for other hereditaments belonging to X. Y., or has agreed to concur in making a partition of the hereditaments, one undivided moiety whereof is settled by the said indenture], and the sum of £— is required for such enfranchisement [or for equality of exchange or partition]: AND WHEREAS the said A. B. has requested the said C. D. to lend the sum of £— required as aforesaid upon mortgage of the hereditaments hereinafter described, being part of the hereditaments settled by the said indenture, which he has agreed to do: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £— on or before the execution of these presents paid by the said C. D., at the request of the said A. B., to the said E. F. and G. H. as the trustees of the said settlement for the purpose aforesaid (the receipt whereof the said E. F. and G. H. hereby acknowledge), the said A. B., in exercise of the power for this purpose vested in him by the Settled Land Act, 1882, and of all other powers (if any) him hereunto enabling, and as beneficial owner (*b*), hereby conveys unto the said C. D. ALL, &c. (*parcels*), To HOLD the same unto and to the use of the said C. D. in fee simple: PROVIDED ALWAYS that if the said A. B. or any other person interested in the said hereditaments under the said indenture of settlement, shall on the — day of — next pay to the said C. D. the sum of £—, with interest thereon after the rate of £— per cent. per annum, computed from the date of these presents, then and in such case (*c*) the hereditaments hereby conveyed shall be reconveyed

Recital of
settlement.

Agreement by
tenant for life
for enfran-
chisement,
exchange, or
partition.

Agreement
for loan.

Witnessing
part.

Tenant for life
conveys to
mortgagee.

Proviso for
redemption.

(*b*) It is apprehended that the tenant for life, if he chooses to exercise the power of mortgaging, must submit to be bound by the absolute covenants implied by law on the part of a mortgagor.

(*c*) If the property mortgaged is copyhold, the remainder of this proviso should be omitted, and the words "the conveyance hereby made shall be void" should be substituted."

BY TENANT FOR
LIFE UNDER
SETTLED LAND
ACT.

Interest to be
paid half-
yearly.

Covenant by
tenant for life
to keep down
interest.

Acknowledg-
ment of right
to production
of deeds and
undertaking
for safe
custody.

to the uses subsisting therein under the said indenture of settle-
ment, such reconveyance to be at the cost of the person or
persons requiring the same: AND IT IS HEREBY DECLARED that
if the said principal sum of £—— shall not be paid on the said
—— day of —— next, interest shall thenceforth be paid
thereon after the rate aforesaid by equal half-yearly payments
on the —— day of —— and the —— day of —— in every
year: AND the said A. B. hereby covenants with the said C. D.
that he, the said A. B., will during his life pay the interest to
accrue on the said principal sum as and when the same shall
become due and payable: AND the said A. B. hereby acknow-
ledges the right of the said C. D. to production of the said in-
denture of settlement [and also of the documents mentioned in
the schedule hereto] and to delivery of copies thereof, and he
hereby undertakes for the safe custody thereof.

IN WITNESS, &c.

No. LXIII.

BY TENANT FOR
LIFE UNDER
SETTLED LAND
ACT.

MORTGAGE by TENANT for LIFE under section 18 of the
SETTLED LAND ACT, 1882, to RAISE money for ENFRAN-
CHISEMENT or for EQUALITY of EXCHANGE or PARTI-
TION. (*Another form, where the subject of the enfran-
chisement, exchange, or partition is also the subject of the
mortgage.*)

Parties.

Recital of
settlement and
of deed of en-
franchisement,
exchange, or
partition;

THIS INDENTURE, made the —— day of ——, BETWEEN
A. B. of, &c. (*tenant for life*), of the first part, E. F. of, &c.,
and G. H. of, &c. (*trustees of the settlement*), of the second
part, and C. D. of, &c. (*mortgagee*), of the third part (*Recite
settlement sufficiently to show that A. B. is tenant for life and E. F.
and G. H. trustees with power of sale and therefore trustees for
purposes of Settled Land Act, and recite also deed of enfranchise-
ment or exchange or partition, showing that the money for enfran-
chisement or for equality of exchange or partition was paid by the*

trustees at the request of the tenant for life): AND WHEREAS the sum of £—— in the said indenture bearing even date herewith expressed to be paid by the said E. F. and G. H. for enfranchisement [*or for equality of exchange or partition*] as aforesaid, was advanced to them for that purpose by the said C. D. at the request of the said A. B., it having been agreed between the said A. B. and the said C. D. that the said C. D. should advance the same, and that the repayment thereof with interest should be secured to him in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £——, so as aforesaid paid by the said C. D. at the request of the said A. B. to the said E. F. and G. H. as the trustees of the said settlement (the receipt whereof the said E. F. and G. H. hereby acknowledge), the said A. B., &c. (*remainder of precedent the same as the last one*).

IN WITNESS, &c.

BY TENANT FOR
LIFE UNDER
SETTLED LAND
ACT.

that money
paid for en-
franchisement,
&c., was ad-
vanced by
mortgagee;
and agreement
for mortgage.

Witnessing
part.
Consideration.

No. LXIV.

MORTGAGE *by the TRUSTEES of a SETTLEMENT on behalf of an INFANT TENANT IN TAIL under sections 18 and 60 of the SETTLED LAND ACT, 1882, to RAISE money for ENFRANCHISEMENT, or for EQUALITY of EXCHANGE or PARTITION.*

BY TRUSTEES
UNDER
SETTLED LAND
ACT.

THIS INDENTURE, made the — day of —, BETWEEN E. F., of, &c., and G. H., of, &c. (*trustees of settlement*), of the one part, and C. D., of, &c. (*mortgagee*), of the other part (*Recite settlement sufficiently to show that A. B., an infant, is tenant in tail in possession, and that E. F. and G. H. are trustees of the settlement for the purposes of the Act*): AND WHEREAS under the power in that behalf contained in the Settled Land Act, 1882, the said E. F. and G. H., on behalf of the said A. B., have agreed, &c. (*agreement for enfranchisement, exchange, or partition as in precedent No. LXII.*): AND WHEREAS the said E. F. and G. H., on behalf of the said A. B., have requested, &c. (*agreement for loan, as in precedent No. LXII.*): NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— on or

Parties.

Recital of
settlement;

Agreement by
trustees on
behalf of
infant tenant
in tail for en-
franchisement,
&c., and to
borrow money
on mortgage.

Witnessing
part.
Consideration

BY TRUSTEES
UNDER
SETTLED LAND
ACT.

Trustees on
behalf of
infant convey
to mortgagee.

before the execution of these presents paid by the said C. D. to the said E. F. and G. H. as trustees of the said settlement (the receipt whereof the said E. F. and G. H. hereby acknowledge), the said E. F. and G. H., on behalf of the said A. B., and in exercise of the power for this purpose vested in them by the Settled Land Act, 1882, and of all other powers (if any) them hereunto enabling, and as trustees hereby convey, &c. (*remainder of precedent the same as No. LXII., omitting the covenant by A. B. to pay interest, and substituting in the acknowledgment of right to production of deeds, "the said E. F. and G. H., on behalf of the said A. B., for "the said A. B."*)

IN WITNESS, &c.

No. LXV.

SUBSTITUTED
SECURITY
UNDER
SETTLED LAND
ACT.

MORTGAGE by TENANT for LIFE of LANDS by way of SUBSTITUTION for LANDS RELEASED by MORTGAGEE on a SALE, under section 5 of the SETTLED LAND ACT, 1882.

Parties.

Recital of
mortgage and
of will of
mortgagor;

Agreement by
tenant for life
to sell, and
between
tenant for life
and mortgagee
for substitution
of other
property as
security;

That sale has
been com-
pleted with

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*tenant for life*), of the one part, and C. D., of, &c. (*mortgagee*), of the other part (*Recite mortgage by X. Y. to C. D., and will of X. Y., devising all his real estate in strict settlement, under which A. B. is tenant for life—death of testator—and probate of will*): AND WHEREAS the said A. B., under the powers of the Settled Land Act, 1882, lately agreed to sell the hereditaments comprised in the said indenture of mortgage to L. M., of, &c., and with a view to such sale the said A. B. agreed with the said C. D. that the said hereditaments herein-after described and intended to be hereby conveyed (being part of the real estate devised by the said will as aforesaid) should be substituted for the hereditaments agreed to be sold as aforesaid as a security for the said mortgage debt of £— and the interest thereof: AND WHEREAS the said sale has been carried into effect by an indenture bearing even date herewith, and the

said C. D. joined in that indenture so as to release the hereditaments comprised therein from the said mortgage debt and the interest thereof: NOW THIS INDENTURE WITNESSETH that in consideration of the premises, the said A. B., as beneficial owner, in exercise of the power for this purpose conferred on him by section 5 of the Settled Land Act, 1882, and of all other powers (if any) him hereunto enabling, and as beneficial owner hereby conveys unto the said C. D. ALL, &c. (*parcels*), To HOLD the same unto and to the use of the said C. D. in fee simple, subject to the same right or equity of redemption as immediately before the execution of the said indenture bearing even date herewith was subsisting in the hereditaments comprised in the said indenture of mortgage under or by virtue of that indenture, To the end and intent that the hereditaments hereby conveyed may be substituted for the hereditaments comprised in the said indenture of mortgage as a security for the said principal sum and interest thereby secured.

IN WITNESS, &c.

SUBSTITUTED
SECURITY
UNDER
SETTLED LAND
ACT.

concurrence of
mortgagee.

Witnessing
part.

Tenant for life
conveys other
hereditaments
to mortgagee
subject to
same right of
redemption,
and by way of
substitution
for lands sold.

No. LXVI.

MORTGAGE of REVERSIONARY INTEREST in a Share of
personal estate under a WILL,—COVENANTS by the
FATHER of MORTGAGOR, and by his MOTHER with a
view to bind her SEPARATE ESTATE, to pay the INTEREST by way of ADDITIONAL SECURITY.

OF
REVERSIONARY
INTEREST IN
PERSONALTY.

THIS INDENTURE, made the — day of —, BETWEEN Parties.
A. B., of, &c. (*mortgagor*), of the first part, C. D., of, &c., and
E., his wife (*the father and mother of the said A. B.*), of the second
part, and G. H., of, &c. (*mortgagee*), of the third part: WHEREAS
under the will of L. M., late of —, deceased, dated the —
day of —, and duly proved in the Principal Probate Registry
of the High Court of Justice, the said A. B. is beneficially
entitled to one equal third part or share of the residuary personal
estate and effects of the said L. M., deceased, in reversion

Recite will
under which
mortgagor is
entitled to
one-third of
personal
estate.

**OF
REVERSIONARY
INTEREST IN
PERSONALTY.**

Funds of
which part of
personal estate
consists.

Remainder of
personal estate
not ascer-
tained.

Agreement for
mortgage.

Witnessing
part.

Consideration.

Assignment of
personalty
expectant on
death or mar-
riage of N. O.

to mortgagee.

Proviso for
redemption.

Covenants by
father and
mother of
mortgagor to
pay the inte-
rest in case
of default.

expectant on the decease or marriage again, whichever shall first happen, of N. O.: AND WHEREAS part of the residuary personal estate and effects of the said L. M., deceased, or of the investments of the produce thereof, consists of the sum of £— £2½ per Cent. Consolidated Stock, now standing in the names of X. Y. and Y. Z., as the present trustees of the said will: AND WHEREAS neither the amount nor the particulars of the remainder (if any) of the residuary personal estate and effects of the said L. M., deceased, can at present be ascertained (*Agreement for loan, supra*, p. 542): NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B., &c. (*Covenant to pay principal and interest, supra*, p. 531): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B., as beneficial owner, hereby assigns unto the said G. H., ALL THAT the one equal third part or share of him the said A. B., under or by virtue of the said will of the said L. M., deceased, expectant as aforesaid, of and in the said sum of £— £2 15s. per Cent. Consolidated Stock, and of and in all other (if any) the residuary personal estate and effects of the said L. M., deceased, and the proceeds thereof, and of and in the stocks, funds, and securities in or upon or of which the same or any part thereof may be invested or consist, or by which the same may be represented, howsoever the same respectively may be invested, circumstanced, secured or described, and the income and accumulations thereof respectively: To HOLD the same share and premises unto the said G. H.; PROVIDED ALWAYS that if the said sum of £—, with interest thereon, shall be paid to the said G. H. on the said — day of — next, according to the foregoing covenant in that behalf, the said share and premises hereby assigned shall at the request and cost of the said A. B. be re-assigned to him or them: AND IN PURSUANCE OF THE SAID AGREEMENT in this behalf, the said C. D., and, with intent to bind her separate estate, the said E. D., respectively, hereby covenant with the said G. H. that in case and as often as the said A. B., or his representatives, shall neglect or fail to pay the interest on the said sum of £—, or any part thereof, for the space of fourteen days next after the respective days hereinbefore appointed for payment of such interest, they the said C. D. and E., his wife, or one of them, shall and will pay the interest on

the said sum of £——, or so much of such interest as the said A. B., or his representatives, shall so for the time being have neglected or failed to pay.

IN WITNESS, &c.

OF
REVERSIONARY
INTEREST IN
PERSONALTY.

No. LXVII.

MORTGAGE by TENANT FOR LIFE and REVERSIONER of
their interests in a RESIDUARY ESTATE under a WILL.
The REVERSIONER joins as SURETY.

MORTGAGE
BY TENANT FOR
LIFE AND
REVERSIONER
OF RESIDUARY
ESTATE
UNDER A WILL.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*mortgagor*), of the first part, C. D., of, &c. (*surety*), of the second part, and E. F., of, &c. (*mortgagee*), of the third part (*Recite will of G. H., whereby, after making certain devises and bequests, he gave all the residue of his real and personal estate to trustees upon trust for sale and conversion, to invest proceeds, and pay income to A. B. his wife for her life, and on her death to divide the principal between sons attaining twenty-one, and daughters attaining twenty-one or marrying, in equal shares—Death of testator and probate of his will*): AND WHEREAS there were issue of the said G. H. two children and no more, and the said C. D. is one of such children, and he has attained the age of twenty-one years: AND WHEREAS the said E. F. hath agreed to lend to the said A. B. the sum of £——, on having the repayment thereof with interest secured to him in the manner hereinafter expressed: AND WHEREAS the said C. D. hath agreed to join in these presents as surety for the said A. B. in manner hereinafter mentioned: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. paid by the said E. F. on or before the execution of these presents (*the receipt, &c.*), the said A. B. and C. D. jointly and severally covenant with the said E. F. to pay, &c. (*to pay principal and interest, supra, 531*): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid the said A. B. and C. D., as beneficial owners,

Parties.

Recite will of testator, his death, and probate of the will,

that testator had issue two children, and that reversioner is one,

agreement for mortgage,

that reversioner has agreed to join as surety.

Consideration.

Joint and several covenants by tenant for life and reversioner to pay principal and interest.

MORTGAGE
BY TENANT FOR
LIFE AND
REVERSIONER
OF RESIDUARY
ESTATE
UNDER A WILL.

Tenant for life
and rever-
sioner
assign life
interest and
reversion

to mortgagee,
subject to
proviso for
redemption.

hereby respectively assign unto the said E. F. FIRST, ALL the estate and interest of the said A. B. for her own life under or by virtue of the said recited will in the residuary real and personal estate thereby devised and bequeathed, and in the moneys produced and to be produced by the sale and conversion thereof, and in the stocks, funds, and securities, of which the same respectively may for the time being consist, or by which the same respectively may for the time being be represented, and the income thereof: AND SECONDLY, ALL that the one undivided moiety or equal half part of the said C. D., under or by virtue of the said recited will expectant on the decease of the said A. B., in the same residuary real and personal estate, moneys, stocks, funds, securities, and income: To HOLD the same unto the said F. F., PROVIDED ALWAYS, that if the said sum of £—, with interest thereon, shall be duly paid to the said E. F. on the said — day of — next, according to the foregoing covenant in that behalf, then and in such case the premises hereby assigned shall be re-assigned to the said A. B. and C. D., according to their respective estates and interests respectively, and at their own expense.

IN WITNESS, &c.

No. LXVIII.

AGREEMENT
FOR
MORTGAGE.

AGREEMENT for MORTGAGE of FREEHOLD and LEASE-
HOLD PROPERTY accompanied by deposit of LEASE (a).

Parties.

Recite agree-
ment for
advance.

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c. (*mortgagee*), of the other part: WHEREAS the said A. B. has requested the said C. D. to lend him the sum of £3,000, which the said C. D. hath agreed to do upon having the repayment thereof with interest secured to him by a mortgage of the free-

(a) This deed is chargeable with the ordinary *ad valorem* stamp duty, but no further *ad valorem* duty will be payable on the legal mortgage to be executed in pursuance of it.

hold hereditaments at —, in the county of —, described in the schedule hereto, and by an equitable mortgage of certain leasehold premises at —, in the county of —, held under an indenture of lease, dated the — day of —, and made between — of the one part, and — of the other part, and by such further stipulations in relation thereto as are herein-after contained: AND WHEREAS the title to the said freehold hereditaments cannot be forthwith made out and investigated, but the said A. B. having immediate occasion for the sum of £1000, part of the said sum of £3000, hath requested the said C. D. to advance him the same at once, and as an inducement to him so to do hath deposited with him the said indenture of lease (as he the said C. D. doth hereby acknowledge), and hath also agreed to execute these presents: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £1000 (part of the said intended loan of £3000) to the said A. B. now paid by the said C. D. (*the receipt, &c.*), and also in consideration of the further sum of £2000 (residue of the said intended loan of £3000) which is intended to be advanced by the said C. D. to the said A. B. on the execution of the mortgage of the freehold hereditaments hereinafter mentioned, he the said A. B. hereby covenants with the said C. D. that the said indenture of lease, and the said leasehold hereditaments and premises comprised therein, shall be a security for the payment to him as well of the said sum of £1000, with interest for the same after the rate of £— per cent. per annum, to be computed from the date of these presents, as also of the said further sum of £2000, residue of the said intended loan of £3000, with interest for the same, after the rate aforesaid, to be computed from the time or respective times of lending the same; and also that the said A. B. will, within one calendar month from the date hereof, at his own expense, deduce and show a good and marketable title to the said freehold hereditaments for an estate in fee simple in possession, free from incumbrances, and will, upon receipt of the said sum of £2000, the residue of the said intended loan, by all such assurances and other acts in the law as the said C. D. shall require, convey the said freehold hereditaments unto the said C. D. in fee simple by way of mortgage for further securing to him the repayment of the said sum of £3000, with interest

AGREEMENT
FOR
MORTGAGE.

That title to
freeholds has
not been in-
vestigated.

Deposit of
lease.

Witnessing
part.
Consideration.

Mortgagor
covenants that
lease shall be
security;

and that he
will deduce
title to free-
holds;

and assure
same to mort-
gagee.

AGREEMENT
FOR
MORTGAGE.

Mortgage to
contain a
clause not to
pay off or call
in.

Covenant by
mortgagor to
execute an
underlease or
assignment in
case of default.

These presents
to be a good
equitable
security of
freeholds and
leaseholds.

for the same after the rate aforesaid; and such assurance or assurances by way of mortgage, or some or one of them, shall contain proper covenants for payment of the principal money and interest thereby secured at the expiration of six calendar months from the date thereof, but nevertheless with provisions restraining the mortgagor from paying off the same within three years, and the mortgagee from calling in the same within five years from the date thereof, unless default shall be made in regular payment of the interest on the half-yearly days of payment to be therein specified, or within twenty-one days after the same respectively: AND ALSO that if default shall at any time be made in payment of the interest on the said principal sum of £3000, or any part thereof, for twenty-one days after either of the said half-yearly days of payment, then and in such case he the said A. B. will, within one calendar month next after he shall have been requested so to do, execute an assignment or underlease of the said leasehold hereditaments to the said C. D., or as he shall appoint, by way of mortgage, for further and better securing to him or them the repayment of the said sum of £3000, with interest for the same after the rate and in the manner aforesaid, and with such provisions, if any, for not paying off and not calling in the said principal sum as shall for the time being be subsisting under or by virtue of the said mortgage, assurance, or assurances so to be made of the said freehold hereditaments as hereinbefore is mentioned: AND THE SAID A. B. hereby further covenants with the said C. D., that in the meantime, and until the several assurances shall be made and executed as aforesaid, these presents shall enure as a good equitable mortgage of all the said freehold and leasehold hereditaments and premises for securing to the said C. D. the said sum of £3000, or so much thereof as shall for the time being have been actually advanced by him or them to the said A. B., and the interest thereof after the rate aforesaid.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. LXIX.

MEMORANDUM of DEPOSIT of TITLE DEEDS to secure a given SUM, and CHARGE on the PROPERTY comprised in the DOCUMENTS deposited, and AGREEMENT to execute LEGAL MORTGAGE if required (a).

**MEMORANDUM
OF DEPOSIT OF
TITLE DEEDS.**

MEMORANDUM that on this — day of —, A. B., of, &c. (*mortgagor*), has deposited with C. D., of, &c. (*mortgagee*), the documents comprised in the schedule hereto, with intent to create an equitable mortgage upon all the property comprised therein or to which the same relate, for securing the repayment by the said A. B. to the said C. D., on the — day of — next, of the sum of £1,000, this day advanced and paid by the said C. D. to the said A. B., together with interest thereon, after the rate of £— per cent. per annum, computed from the date thereof: **AND THE SAID A. B. agrees at any time or times during the continuance of this security, upon the request of the said C. D., but at the cost of the said A. B., to execute to the said C. D. a legal mortgage (b) of the said property, with such powers and provisions and in such form as the said C. D. may require for further securing the payment of the said principal money and interest: [AND it is hereby further agreed (c)** that in the meantime, and until a legal mortgage is executed as aforesaid, the said C. D., his executors, administrators, and assigns, shall have all the powers conferred on mortgagees by sections 19 to 24 both inclusive, and by section 67 of the Conveyancing and Law of Property Act, 1881, in like manner as if these presents had been a mortgage by deed, and that the said A. B. and all persons deriving title under him shall, upon any sale made under the said statutory power, execute and do

Parties.

Agreement that title deeds comprised in schedule shall be security for given sum.

Agreement by mortgagor to execute a legal mortgage, on request.

Power of sale.

(a) This instrument is chargeable with an *ad valorem* duty of 1s. for every £100, and every fractional part of £100. (51 Vict. c. 8, s. 15.)

(b) See *Hermann v. Hodges*, L. R. 16 Eq. 18.

(c) The clause in brackets to be inserted if desired. Under it all the equitable estate of the mortgagor can be sold, and if on a sale he refuses to convey the legal estate to the purchaser the difficulty may be met by the conditions or agreement providing that all outstanding legal estates shall be got in at the purchaser's expense. See Conveyancing Act, 1881, s. 21; *In re Hodson and Howe's Contract*, 35 Ch. D. 668.

Sale under power in equitable mortgage passes equitable estate.

**MEMORANDUM
OF DEPOSIT OF
TITLE DEEDS.**

such assurances and things for vesting in the purchaser the legal estate of the property sold as shall be required in that behalf by the person or persons by whom the sale shall have been made.]

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. LXX.

**MEMORANDUM
OF DEPOSIT OF
TITLE DEEDS
TO SECURE
FUTURE
ADVANCES.**

MEMORANDUM of DEPOSIT of TITLE DEEDS to secure a given SUM and future ADVANCES, and CHARGE on the PROPERTY comprised in the DOCUMENTS deposited, and AGREEMENT to execute LEGAL MORTGAGE if required (a).

Parties.

Agreement
that title deeds
comprised in
schedule shall
be security for
given sum and
future
advances.

MEMORANDUM that on this — day of —, A. B., of, &c. (*mortgagor*), has deposited with C. D., of, &c. (*mortgagee*), the documents comprised in the schedule hereto, with intent to create an equitable mortgage on all the property comprised therein, or to which the same relate, for securing the repayment by the said A. B. to the said C. D., on the — day of — next, of the sum of £—, which has been advanced by the said C. D. to the said A. B., together with interest thereon, after the rate of £— per cent. per annum, to be computed from the date hereof, and also for the repayment of such further sum or sums as shall at any time or times hereafter, whilst the said documents shall continue in the possession of the said C. D., be advanced by him to the said A. B., together with interest thereon after the rate aforesaid, to be computed from the time or respective times of advancing the same respectively, at the expiration of six calendar months from the time or respective times of such respective advances being made: AND THE SAID

(a) This instrument is chargeable with an *ad valorem* duty of 1s. for every £100, and will be a security in respect of the further advances for such an amount as the additional duty will extend to cover.

A. B. agrees at any time or times during the continuance of this security, upon the request of the said C. D., but at the cost of the said A. B., to execute to the said C. D. a legal mortgage of the said property, with such powers and provisions and in such form as the said C. D. may require, for further securing the said principal moneys and interest (*insert, if desired, agreement that equitable mortgagee shall have statutory power, supra, p. 635*).

MEMORANDUM
OF DEPOSIT OF
TITLE DEEDS
TO SECURE
FUTURE
ADVANCES.

Agreement by
mortgagor to
execute legal
mortgage on
request.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. LXXI.

MEMORANDUM of DEPOSIT of TITLE DEEDS with a
BANKING COMPANY to secure BALANCE OF ACCOUNT
CURRENT (a).

MEMORANDUM
OF DEPOSIT
WITH BANKING
COMPANY.

I, the undersigned A. B., of, &c. (*mortgagor*), hereby acknowledge that I have this day deposited with the — Banking Company the documents specified in the schedule hereto with intent to create an equitable mortgage upon all the property to which such documents relate, for the purpose of securing the payment to the said company of all moneys which now are, or which at any time or times hereafter may become due from me to the said company, whether alone or in co-partnership with any other person or persons, in account current with the said company (including money owing upon any cheques, promissory notes, or bills of exchange, drawn, accepted, or endorsed by me, or which shall have been paid for my credit, either solely or jointly with others, and including also interest with

Property
comprised in
deposited
deeds to be
security for
current
account.

(a) This instrument will be a security for such an amount as the stamp duty at 1s. per cent. will extend to cover.

MEMORANDUM
OF DEPOSIT
WITH BANKING
COMPANY.

Power of sale.

Agreement by
mortgagor to
execute legal
mortgage on
request.

half-yearly rests, commission, and other customary charges):

AND I hereby agree to pay off all such moneys when thereunto required by the said company, or by their secretary, or the manager or any branch manager thereof: [AND I hereby agree (a) and declare that the said company may, at any time or times hereafter, sell the said property, or any part thereof, and may buy in at sales by auction, or rescind contracts for sale, and resell without being answerable or accountable for any loss or diminution in price, and may, with and out of the sale moneys, retain all moneys owing on this security, with all costs and expenses incurred in relation thereto, the surplus (if any) to be paid to me: AND I hereby agree to execute any deed or deeds which may be necessary in order to convey the legal estate to the purchaser or purchasers: PROVIDED nevertheless that such power (yet so that this proviso shall not affect any purchaser under any sale pursuant to the said power) shall not be exercised unless default shall be made in payment of the balance on the said account current or other the moneys due from me, and the interest thereon, or some part thereof, for one calendar month after a notice in writing demanding such payment shall have been given to me by or on behalf of the said company, or shall have been left for me at my usual or last-known place of abode in England or Wales, or at or upon some part of the property subject to this security, or unless such default shall be made for one calendar month after the said account shall have been closed (which shall first happen) (b)]: AND I hereby further agree at any time or times, upon the request of the said company, but at the cost of myself, to execute to the said company a legal mortgage

(a) If preferred, the following can be substituted for the power of sale in the text:—

AND I DECLARE that the said Company shall have all the powers conferred on mortgagees by sections 19 to 24 inclusive and section 67 of the Conveyancing and Law of Property Act, 1881, in like manner as if these presents had been a mortgage by deed, and I agree in the event of any sale by the said Company under the statutory power to execute all assurances which may be required for vesting the legal estate in the purchaser.

(b) See note (c), at p. 635.

of such property, in such form and with such power of sale and other provisions as the said company may require for securing the payment of the moneys secured by such deposit and equitable mortgage as aforesaid: AND I hereby also agree that if, at the time when the said account current shall be closed, a balance shall be owing from me to the said company, I will, so long as such balance as aforesaid or any part thereof shall remain owing, pay interest thereon to the said company after the rate of £5 per cent. per annum, computed from the time when such balance shall be ascertained: As WITNESS my hand this — day of —, 18—.

MEMORANDUM
OF DEPOSIT
WITH BANKING
COMPANY.

To pay interest
on balance
after account
is closed.

THE SCHEDULE ABOVE REFERRED TO.

No. LXXII.

MEMORANDUM of DEPOSIT of MISCELLANEOUS SECURITIES with a BANKING COMPANY to secure BALANCE OF ACCOUNT CURRENT (a).

OF DEPOSIT OF
MISCELLA-
NEOUS SECU-
RITIES.

I, the undersigned A. B., of, &c. (*mortgagor*), do hereby acknowledge that I have this day deposited with the — Banking Company the documents comprised in the schedule hereunder written to the intent that the same, and all the property, moneys, and advantages, comprised in, secured or represented by, and derivable under or by virtue of such documents, shall be a security for the payment to the said company of all moneys which now are, or which at any time or times hereafter may become, due from me to the said company, whether alone or in co-partnership with any other person or persons, in account current with the said company (including money owing upon any cheques, promissory notes, or bills of exchange drawn, accepted, or indorsed by me, or which shall have been paid for my credit, either solely or jointly with others, and including also interest

Property,
moneys, and
advantages
comprised in
deposited
documents to
be security
for account
current.

(a) See *supra*, p. 637, note.

OF DEPOSIT OF
MISCELLA-
NEOUS SECU-
RITIES.

Power of sale.

Agreement by
mortgagor to
pay interest on
balance after
account is
closed.

with half-yearly rests, commission, and other customary charges) : [AND I hereby agree to pay off all such moneys when thereunto required by the said company, or by their secretary, or the manager or any branch manager thereof : AND I hereby agree and declare that the said company may, at any time or times after default by me in such payment, sell the said property, moneys, and advantages, and the securities for the same or any of them, or any part thereof, and may buy in or rescind contracts for sale, and re-sell without being accountable for any loss or diminution in price, and may, out of the sale moneys, retain all moneys owing on this security, with all costs and expenses incurred in relation thereto, the surplus (if any) to be paid to me (a) :] and if there be any deficiency it shall be made good by me : AND I hereby also agree that if at the time when the said account shall be closed a balance shall be owing from me to the said company, I will, so long as such balance, or any part thereof, shall remain owing, pay interest thereon to the said company, after the rate of £5 per cent. per annum, computed from the time when such balance shall be ascertained : As WITNESS my hand this — day of —, 18—.

THE SCHEDULE ABOVE REFERRED TO.

No. LXXIII.

DEED of FURTHER CHARGE (b).

(A.) *Where the mortgage deed is recited.*

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (mortgagor), of the one part, and C. D., of, &c.

(a) See note (c), at p. 635.

(b) This and some of the subsequent precedents are framed so as to be applicable (A.) where the further charge recites the mortgage ; (B.) where it is expressed to be supplemental to it, as suggested by sect. 53 of the Conveyancing Act, 1881 ; and (C.) where it is indorsed on the mortgage.

FURTHER
CHARGE.

(*mortgagee*), of the other part: WHEREAS by an indenture dated, &c., and made between the said A. B. of the one part, and the said C. D. of the other part, ALL, &c. (*parcels*) (*b*), were conveyed by the said A. B. unto and to the use of the said C. D., in fee simple by way of mortgage for securing payment to him of the sum of £1,000, with interest thereon: AND WHEREAS the said principal sum of £— remains owing, but all interest thereon has been paid up to the — day of — last: NOW THIS INDENTURE WITNESSETH, that in consideration of the further sum of £500 now paid to the said A. B. by the said C. D. (*the receipt whereof, &c.*), the said A. B. hereby covenants with the said C. D. to pay to him, on the — day of — next (*c*), the sum of £500, with interest for the same after the rate of £— per cent. per annum, computed from the date of these presents: AND also so long after that day as any principal money remains due under these presents to pay to him interest thereon after the rate aforesaid by equal half-yearly payments, on the — day of —, and the — day of —: AND FURTHER, that all the lands and hereditaments comprised in the hereinbefore recited indenture shall stand charged with the payment to the said C. D. of the said sum of £500 hereinbefore covenanted to be paid, and the interest thereon, in addition to the sum of £1,000 and interest secured by the said indenture.

FURTHER
CHARGE.

Recite mort-
gage.

That prin-
cipal is still
due.

Covenant by
mortgagor to
pay further
advance and
interest.

That property
comprised in
mortgage shall
be a security
for further as
well as original
advance.

IN WITNESS, &c.

(B.) *Where the further charge is expressed to be supplemental to the mortgage.*

THIS INDENTURE, &c. (*date and parties as above*), and supplemental to an indenture dated, &c. and made, &c. being a

By supple-
mental deed.

(*b*) If the parcels are long, they need not be fully set out in the recital, but it will be sufficient to describe them in some concise manner, *e. g.*— “the messuage and lands called — farm, situate in the parish of —, in the county of —, in the said indenture particularly described,” [*or* “the capital messuage called — House, situate, &c.”] and “divers other messuages, lands, and hereditaments, situate in, &c., therein particularly described.” The above observation applies to transfers and reconveyances, as well as to deeds of further charge.

Mode of
describing
parcels in
recital of
mortgage.

(*c*) This should be the next half-yearly day for payment of interest mentioned in the mortgage deed.

**FURTHER
CHARGE.**

mortgage of a messuage and lands, called — Farm, situate in the parish of —, in the county of —, to secure payment by the said A. B. to the said C. D. of the sum of £—, with interest thereon [*or, if the further charge is written at the end of the mortgage, supplemental to the above written indenture of mortgage (d)*]: WHEREAS the principal sum of £—, secured by the said indenture of mortgage, still remains owing, but all interest, &c. (*The rest to be the same as (A.)*.)

By indorse-
ment.

(C.) *Where the further charge is indorsed on the mortgage (e).*

THIS INDENTURE, made the — day of —, BETWEEN the within-named A. B. (*mortgagor*), of the one part, and the within-named C. D. (*mortgagee*), of the other part: WHEREAS the principal sum of £—, secured by the within-written indenture still remains owing, but all interest, &c.: NOW, &c. (*The rest will be the same as (A.)*), substituting “the within-written indenture” for “the said indenture of mortgage.”)

IN WITNESS, &c.

No. LXXIV.

**FURTHER
CHARGE
WHERE THERE
HAVE BEEN
PRIOR ONES.**

FURTHER CHARGE *where there have been several* PRIOR
ONES.

(A.) *Where the mortgage and prior further charges are recited.*

Parties.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*mortgagor*), of the one part, and C. D., of, &c. (*mortgagee*), of the other part: WHEREAS, &c. (*Recite mortgage, as in last Precedent, suprd, p. 641*): AND WHEREAS

Recite
mortgage

(d) It is assumed that the later deed is written at the end of the mortgage deed. If, as is sometimes done, it is engrossed on a separate parchment and attached to the principal deed after execution, the principal deed must be recited or referred to sufficiently for identification, just as if there were no annexation.

(e) If the further charge is written at the end of instead of indorsed on the mortgage, it may be either expressed to be supplemental as in (B.), or this form (C.) may be used, substituting “above” for “within” throughout.

by two several indentures, dated respectively the — day of —, and the — day of —, respectively, and made between the parties hereto, the hereditaments comprised in the said indenture of mortgage were charged with the payment by the said A. B. to the said C. D. of the further sums of £—, and £—, and interest thereon respectively: AND WHEREAS all the principal sums of money secured by the said indentures of mortgage, and further charge respectively, remain owing, but all interest thereon has been paid up to the — day of — last: NOW, &c. (*Rest the same as last Precedent, substituting at the end for "in addition to the sum of £1,000, and interest," &c., the words, "in addition to the sums of £—, £—, and £—, secured by the said indentures of mortgage and further charge respectively."*)

FURTHER
CHARGE
WHERE THERE
HAVE BEEN
PRIOR ONES.

and two prior
deeds of fur-
ther charge.
That moneys
remain due.

IN WITNESS, &c.

(B.) *Where the deed is expressed to be supplemental to the previous ones.*

THIS INDENTURE, made, &c. (*date and parties*), and supplemental to an indenture between the same parties, dated the — day of —, being a mortgage of lands and hereditaments, situate at, &c., for securing payment by the said A. B. to the said C. D. of the sum of £—, and interest thereon, and supplemental also to two indentures between the same parties, dated respectively the — day of —, and the — day of —, whereby the said lands and hereditaments were charged with the payment by the said A. B. to the said C. D. of the further sums of £—, and £—, and interest thereon [*or, and supplemental to the above-written indentures of mortgage and further charge, dated respectively (dates)*]: WHEREAS, &c. (*Recite that moneys remain due, &c., and rest of Precedent, as in (A.).*)

By supple-
mental deed.

IN WITNESS, &c.

(C.) *Where this further charge and the previous ones are indorsed on the mortgage (a).*

THIS INDENTURE, made the — day of —, BETWEEN the within-named A. B. (*mortgagor*), of the one part, and the

By indorse-
ment.

(a) See p. 642, note (c).

**FURTHER
CHARGE
WHERE THERE
HAVE BEEN
PRIOR ONES.**

within-named C. D. (*mortgagee*), of the other part: WHEREAS the principal sums of £—, £—, and £—, secured by the within-written indenture of mortgage, and the indentures of further charge indorsed thereon, and dated respectively the — day of —, and the — day of —, still remain owing, but all interest thereon has been paid up to the — day of — last: NOW, &c. (*Rest the same as (A.).*)

IN WITNESS, &c.

No. LXXV.

**FURTHER
CHARGE AND
COLLATERAL
SECURITY.**

FURTHER CHARGE on a LIFE INTEREST and POLICY of ASSURANCE PREVIOUSLY MORTGAGED, and COLLATERAL SECURITY on a NEW POLICY effected in the NAME of the MORTGAGEE (by indorsement on Precedent No. XXIX.).

Parties.

Recite that principal sum remains owing.

Agreement for further advance.

Witnessing part.

Covenant to pay principal and interest, and further charge.

Agreement that mortgagee shall hold new policy, subject to same right of

THIS INDENTURE, made the — day of —, BETWEEN the within-named A. B. (*mortgagor*), of the one part, and the within-named C. D. (*mortgagee*), of the other part: WHEREAS the principal sum of £— secured by the within-written indenture remains owing, but all interest thereon has been paid up to the — day of — last: AND WHEREAS the said C. D. hath agreed to lend to the said A. B. the further sum of £500, upon having the re-payment thereof, with interest for the same, secured to him in the manner hereinafter expressed: AND WHEREAS by a policy (*Recite policy on the life of A. B. in the name of C. D., suprd, p. 567*): NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*Covenant by mortgagor to pay principal and interest, suprd, p. 531*): AND FURTHER, that the dividends, interest, and annual produce, and policy of assurance comprised in the within-written indenture shall stand charged, &c. (*as in Precedent No. LXXIII., to the end, p. 641*): AND IT IS HEREBY AGREED AND DECLARED, that the said C. D. shall stand possessed of the hereinbefore recited policy of assurance and the moneys thereby assured, subject to the same right of redemption as is now subsisting in the within-men-

tioned policy of assurance, and the moneys thereby assured, under or by virtue of the within-written indenture, and the further charge hereinbefore made (*Covenants by A. B. to keep on foot "the hereinbefore recited policy," and "otherwise in relation thereto"*—see *supra*, pp. 565, 568).

IN WITNESS, &c.

FURTHER
CHARGE AND
COLLATERAL
SECURITY.

redemption,
&c., as former
policy.

No. LXXVI.

FURTHER CHARGE on FREEHOLDS comprised in a FORMER MORTGAGE, and MORTGAGE of ADDITIONAL FREEHOLDS, both PROPERTIES being made a SECURITY for the ORIGINAL DEBT and FURTHER ADVANCE (a).

FURTHER
CHARGE AND
MORTGAGE OF
ADDITIONAL
FREEHOLDS,
BOTH PRO-
PERTIES TO BE
SECURITY FOR
BOTH DEBTS.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*mortgagor*), of the one part, and C. D., of, &c. (*mortgagee*), of the other part: WHEREAS by an indenture dated, &c., and made between the said A. B., of the one part, and the said C. D., of the other part, in consideration of the sum of £1,000 paid to the said A. B. by the said C. D., ALL that farm, &c., called — therein particularly described, was conveyed by the said A. B. unto the said C. D. in fee simple, subject to the proviso therein contained for the redemption of the said hereditaments and premises on payment by the said A. B. to the said C. D. of the sum of £1,000 and interest thereon as therein mentioned: AND WHEREAS the said principal sum of £1,000 remains due upon the security of the said indenture, but all interest thereon has been paid up to the date of these presents: AND WHEREAS the said C. D. has agreed to lend to the said A. B. the further sum of £500 upon having the repayment thereof, with interest thereon, secured by a further charge on the hereditaments comprised in the said indenture, and upon having the repayment of both the said sums of £1,000 and £500, making together £1,500, and the interest thereof, further secured by a mortgage of the hereditaments intended to be hereby conveyed: NOW

Parties.
Recite former
mortgage.

Agreement
for further
advance on
having the
same as well as
the original
mortgage debt
secured on
property com-
prised in first
mortgage and

(a) This plan is to be preferred to the insertion of a general clause in either deed negating sect. 17 of the Conveyancing Act, 1881. (See *supra*, p. 484.)

**FURTHER
CHARGE AND
MORTGAGE OF
ADDITIONAL
FREEHOLDS,
BOTH PRO-
PERTIES TO BE
SECURITY FOR
BOTH DEBTS.**

by a mortgage
of additional
property.

Mortgagor
conveys addi-
tional prop-
erty to the
mortgagee, in
fee simple.

Proviso for
redemption of
both pro-
perties on pay-
ment of
original mort-
gage debt and
further ad-
vance.

THIS INDENTURE WITNESSETH, that in consideration of the sum of £500 (*covenant by A. B. to pay £500, and interest, supra, p. 641*): **AND THIS INDENTURE FURTHER WITNESSETH**, that in consideration, &c., **THE SAID A. B.** hereby covenants with the said C. D. that the hereditaments comprised in the hereinbefore recited indenture shall stand charged, &c. (*further charge, see supra, p. 641*): **AND THIS INDENTURE ALSO WITNESSETH**, that for the consideration aforesaid the said A. B., as beneficial owner, hereby conveys unto the said C. D. **ALL, &c. (parcels)**, To hold the same unto and to the use of the said C. D. in fee simple: **PROVIDED ALWAYS**, that if the said sum of £1,000 secured by the hereinbefore recited indenture and the interest thereof, and also the said sum of £500 hereinbefore covenanted to be paid and the interest thereof, shall be duly paid on the — day of — next, then and in such case the hereditaments hereby conveyed shall, at the request and cost of the said A. B., his heirs or assigns, be reconveyed to him or them. (*Declaration as to leasing power if desired, supra, p. 532.*)

IN WITNESS, &c.

No. LXXVII.

**TRANSFER OF
MORTGAGE
OF FREEHOLDS.**

TRANSFER of MORTGAGE of FREEHOLDS, without the CONCURRENCE of the MORTGAGOR (a).

(A.) *Where the mortgage deed is recited.*

Parties.

THIS INDENTURE, made the — day of —, **BETWEEN** A. B., of, &c. (*mortgagee*), of the one part, and C. D., of, &c. (*trans-*

Mortgagor
should be
made party to
transfer.

Costs.

(a) As a general rule the mortgagor should be made a party to the transfer of the mortgage, in order to obtain his admission that the money remains owing.

Where a mortgagee, without the concurrence of the mortgagor, and without first calling on him to redeem, assigns his mortgage, he cannot add the costs of the transfer to his mortgage. (*In re Radcliffe*, 2 Jur. N. S. 379.)

It is not necessary that the mortgage debt should be assigned on a transfer in order to retain its priority (*Phillips v. Gutteridge*, 4 De G. & J.

feres), of the other part: WHEREAS by an indenture dated, &c., and made between G. H. (*mortgagor*), of the one part, and the said A. B., of the other part, the messuage, lands, and hereditaments known as — farm, situate in, &c., particularly described in a schedule thereto (*b*), were conveyed by the said G. H. unto and to the use of the said A. B., in fee simple, by way of mortgage for securing the payment to the said A. B. of the sum of £—, with interest thereon after the rate of £— per centum per annum: AND WHEREAS the said principal sum of £— remains owing to the said A. B., but all interest thereon has been paid up to the date of these presents: AND WHEREAS the said C. D. hath agreed to pay to the said A. B. the sum of £—, on having a transfer of the said mortgage in manner hereinafter mentioned: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £— to the said A. B. paid by the said C. D. on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges), THE SAID A. B., as mortgagee, hereby assigns unto the said C. D., THE said principal sum of £— secured by the said indenture of mortgage, and all interest henceforth to become due thereon, and the full benefit of all securities for the same (*c*): To HOLD the same unto the said C. D., absolutely: AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, THE SAID A. B., as mortgagee, hereby conveys unto the said C. D., ALL the messuage, lands, hereditaments, and premises comprised in the said indenture of mortgage: To HOLD the same unto and to the use of the said C. D., in fee simple, subject to such right or equity of redemption as is now subsisting in the said premises under or by virtue of the hereinbefore recited indenture.

TRANSFER OF
MORTGAGE
OF FREEHOLDS.

Recite
mortgage.

That mortgage
debt is still
due.

Agreement by
transferee to
pay the sum
due on having
transfer.

Assignment of
mortgage debt
and interest,

and the benefit
of securities,
to transferee
absolutely.

Conveyance
of freeholds
to transferee,

subject to
equity of
redemption.

IN WITNESS, &c.

531); but it is always prudent to do so when the mortgagor is a party, in order to show that the transferee is depending on the old security. (*Watts v. Symes*, 2 De G. Mac. & Gor. 240.)

(*b*) See note at p. 641, as to the mode in which parcels should be described in a recital of a mortgage.

(*c*) A power of attorney is no longer necessary, as the debt passes at law, if notice is given to the mortgagor. (See 36 & 37 Vict. c. 66, s. 25, sub-s. 6.)

**TRANSFER OF
MORTGAGE
OF FREEHOLDS.**

(B.) *Where the deed is expressed to be supplemental to the indenture of mortgage.*

By supplemental deed.

THIS INDENTURE, made, &c. (*date and parties*), and supplemental to an indenture dated, &c., and made, &c., being a mortgage of lands and hereditaments, situate, &c., for securing payment by the said A. B. to the said C. D. of the sum of £—— and interest, [*or, and supplemental to the above written indenture of mortgage*]: WHEREAS, &c. (*Recite that money is due, &c., and rest the same as (A.).*)

(C.) *Where the transfer is indorsed on the mortgage.*

By indorsement.

THIS INDENTURE, made the —— day of ——, BETWEEN the within-named A. B., of, &c. (*transferor*), of the one part, and C. D., of &c. (*transferee*), of the other part: WHEREAS the principal sum of £—— secured by the within-written indenture remains owing to the said A. B., but all interest, &c. (*same as (A.), substituting the words, "the within-written indenture," for "the said indenture," throughout*).

IN WITNESS, &c.

No. LXXVIII.

**TRANSFER
WHERE THERE
HAVE BEEN
PRIOR
TRANSFERS.**

TRANSFER of MORTGAGE of FREEHOLDS *where there have been several* PRIOR TRANSFERS.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. (*transferor*), of the one part, and C. D., of, &c. (*transferee*), of the other part: WHEREAS, &c. (*Recite mortgage*): AND WHEREAS after divers mesne transfers by an indenture dated, &c., and made, &c., the principal sum of £——, secured by the said indenture of mortgage, and the interest thereof, were assigned to the said A. B., and the hereditaments comprised in the said indenture of mortgage were conveyed unto and to the use of the said A. B., in fee simple, subject to such right or

equity of redemption as was then subsisting therein under the said indenture of mortgage: AND WHEREAS, &c. (*Recite that money is due, &c., and rest of Precedent the same as No. LXXVII., supra, p. 647.*)

TRANSFER
WHERE THERE
HAVE BEEN
PRIOR
TRANSFERS.

IN WITNESS, &c.

No. LXXIX.

STATUTORY TRANSFER of a MORTGAGE, MORTGAGOR NOT JOINING (a).

STATUTORY
TRANSFER.

THIS INDENTURE, made by way of statutory transfer of mortgage, the — day of —, BETWEEN A. B., of, &c., of the one part, and C. D., of, &c., of the other part, supplemental to an indenture made by way of statutory mortgage, dated the — day of —, and made between, &c., being a mortgage of lands and hereditaments, situate, &c., for securing the sum of £— and interest, WITNESSETH, that in consideration of the sum of £— now paid to the said A. B. by the said C. D., being the aggregate amount of £— mortgage-money, and £— interest due in respect of the said mortgage, of which sum the said A. B. hereby acknowledges the receipt, the said A. B., as mortgagee, hereby conveys and transfers to C. D. the benefit of the said mortgage.

Transfer by
transferor of
benefit of
mortgage.

IN WITNESS, &c.

(a) The above is Form (A.) in the 3rd Schedule to the Conveyancing Act, 1881, except that it supplies what is wanting in that form, viz., a short reference to the property comprised in the prior mortgage deed. With reference to a deed in the above form, it is provided by sect. 27 of the Act that it shall have effect as follows:—

“(i.) There shall become vested in the person to whom the benefit of the mortgage is expressed to be transferred, who, with his executors, administrators, and assigns, is hereafter in this section designated the transferee, the right to demand, sue for, recover, and give receipts for the mortgage-money, or the unpaid part thereof, and the interest then due, if any, and thenceforth to become due thereon, and the benefit of all securities for the same, and the benefit of and the right to sue on all covenants with the mortgagee, and the right to exercise all powers of the mortgagee. (ii.) All the estate and interest, subject to redemption, of the mortgagee in the mortgaged land shall vest in the transferee, subject to redemption.”

See the observations on the statutory mortgage form at p. 533, *supra*, which observations apply also to the statutory transfer of mortgage forms.

No. LXXX.

**TRANSFER
WHERE MORT-
GAGOR JOINS.****TRANSFER of MORTGAGE of FREEHOLDS where the MORT-
GAGOR joins (a).**

Parties.

Recite agree-
ment for
transfer.First witness-
ing part.Transfer of
mortgagedebt.Second wit-
nessing part.Mortgagee and
mortgagor
convey free-
holds to
transferee,
subject to
equity of
redemption.Mortgagor
covenants
with trans-
feree to pay
principal and
interest.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*mortgagee*), of the first part, C. D., of, &c. (*mortgagor*), of the second part, and E. F., of, &c. (*transferee*), of the third part (*Recite mortgage of freeholds by C. D. to A. B.—that mortgage debt is still due, supra, p. 647*): AND WHEREAS the said E. F., at the request of the said C. D., has agreed to pay to the said A. B. the sum of £— on having a transfer of the said mortgage debt and the interest thereof, and the securities for the same, in manner hereinafter mentioned: NOW THIS INDENTURE, &c. (*Assignment of mortgage debt and interest, as in Precedent No. LXXVII., supra, p. 647*): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B., as mortgagee, hereby conveys, and the said C. D., as beneficial owner, hereby conveys and confirms unto the said E. F., ALL the lands, hereditaments, and premises comprised in the said indenture of mortgage: To HOLD the same unto and to the use of the said E. F., in fee simple, subject to such right or equity of redemption as is now subsisting therein by virtue of the said indenture: AND the said C. D. hereby covenants with the said E. F. to pay the principal sum hereby assigned on the — day of — next, with interest thereon after the rate aforesaid, and also so long after that day as the principal sum or any part thereof remains owing, to continue to pay interest thereon at the same rate upon the half-yearly days appointed for payment thereof by the said indenture of mortgage.

IN WITNESS, &c.

(a) This can be easily adapted to a supplemental or indorsed deed by reference to No. LXXVII, *supra*, p. 646.

No. LXXXI.

DEED *of* STATUTORY TRANSFER, *a* COVENANTOR JOINING (a).

STATUTORY
TRANSFER,
COVENANTOR
JOINING.

THIS INDENTURE, made by way of statutory transfer of mortgage the — day of —, BETWEEN A. B., of, &c., of the first part; C. D., of, &c., of the second part, and E. F., of &c., of the third part, supplemental to an indenture made by way of statutory mortgage, dated the — day of —, and made between, &c., being a mortgage of lands and hereditaments situate at, &c., for securing £— and interest, WITNESSETH, that in consideration of the sum of £— now paid to the said A. B. by the said E. F., being the mortgage-money due in respect of the said mortgage, no interest being now due and payable thereon, of which sum the said A. B. hereby acknowledges the receipt, the said A. B., as mortgagee, with the concurrence of the said C. D., who joins herein as covenantor, hereby conveys and transfers to E. F. the benefit of the said mortgage.

IN WITNESS, &c.

(a) The above is Form (B.) in the 3rd Schedule to the Act, with an addition referring to the property comprised in the mortgage in order to supply the defect of the form in this respect. With reference to a deed in this form, it is provided by the 27th section that there shall also be deemed to be included, and there shall by virtue of the Act be implied therein, a covenant with the transferee by the person expressed to join therein as covenantor, to the effect following, namely:—"That the covenantor will, on the next of the days by the mortgage deed fixed for payment of interest, pay to the transferee the stated mortgage money, or so much thereof as then remains unpaid, with interest thereon, or on the unpaid part thereof, in the meantime, at the rate stated in the mortgage deed; and will thereafter, as long as the mortgage money or any part thereof remains unpaid, pay to the transferee interest on that sum, or the unpaid part thereof, at the same rate, on the successive days by the mortgage deed fixed for payment of interest."

No. LXXXII.

TRANSFER OF
MORTGAGE BY
PERSONAL
REPRESENTA-
TIVES OF
MORTGAGERS.TRANSFER of MORTGAGE of FREEHOLDS by the PERSONAL
REPRESENTATIVES (a) of the SURVIVOR of TWO MORT-
GAGERS by deed INDORSED on the MORTGAGE.

Parties.

Recital of
deaths of
mortgagees
and will of
survivor.That principal
money remains
due.Agreement
for transfer.Transfer of
principal
money and
interest.Conveyance
of mortgaged
property.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c., and C. D., of, &c. (*personal representatives of survivor of two mortgagees*), of the first part; E. F., of, &c. (*mortgagor*), of the second part, and G. H., of, &c. (*transferee*), of the third part: WHEREAS the within-named L. M. died on the — day of —, and the within-named N. O. died on the — day of —, having made his will dated, &c., and thereby appointed the said A. B. and C. D. to be the executors thereof, who duly proved the same in the Probate Registry at — of the High Court of Justice on the — day of —: AND WHEREAS the principal sum of £— secured by the within-written indenture of mortgage still remains owing, but all interest thereon has been paid up to the date of these presents: AND WHEREAS the said G. H. has agreed, at the request of the said E. F., to pay the sum of £— to the said A. B. and C. D., upon having a transfer of the said mortgage in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £— now paid to the said A. B. and C. D. by the said G. H. (the receipt whereof the said A. B. and C. D. hereby acknowledge), the said A. B. and C. D., as the personal representatives of the said N. O., deceased, hereby assign unto the said G. H., &c. (*transfer of principal sum and interest, and benefit of securities to G. H. absolutely, supra, p. 647*): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid the said A. B. and C. D., as such personal representatives as aforesaid, hereby convey, and the said E. F., as beneficial owner, hereby conveys and confirms, &c. (*Conveyance of mortgaged property to G. H., subject to equity of redemption, supra, p. 647*).

IN WITNESS, &c.

(a) See Conveyancing Act, 1881, s. 30.

No. LXXXIII.

TRANSFER of MORTGAGE of FREEHOLDS where a
FURTHER SUM is advanced to the MORTGAGOR.

TRANSFER OF
MORTGAGE
OF FREEHOLDS
WHERE
FURTHER SUM
IS ADVANCED.

Parties.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*transferor*), of the first part; C. D., of, &c. (*mortgagor*), of the second part, and E. F., of, &c. (*transferee*), of the third part (*Recite mortgage of freeholds, which are referred to as "the hereditaments intended to be hereby conveyed" to secure £500 and interest*): AND WHEREAS the said principal sum of £500 remains owing to the said A. B., but all interest thereon has been paid up to the date of these presents: AND WHEREAS the said E. F. hath agreed, at the request of the said C. D., to pay to the said A. B. the sum of £500, on having a transfer of the said mortgage, and to lend to the said C. D. the further sum of £200, on having the repayment thereof, as well as of the said sum of £500, with interest for the same respectively, secured in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £500 to the said A. B. now paid by the said E. F. (*the receipt &c.*), the said A. B., as mortgagee, hereby assigns unto the said E. F., THE SAID principal sum of £500 secured by the hereinbefore recited indenture and the future interest thereof, and the benefit of all securities for the same: To HOLD the same unto the said E. F. absolutely: AND THIS INDENTURE FURTHER WITNESSETH, that in consideration of the said sum of £500 paid by the said E. F. to the said A. B. as aforesaid, and also in consideration of the sum of £200 to the said C. D. at the same time paid by the said E. F. (*the receipt of which sum of £200 the said C. D. hereby acknowledges*), he the said C. D. hereby covenants with the said E. F., to pay to him, on the — day of — next, the sum of £700, with interest thereon in the meantime after the rate of £—— per cent. per annum, computed from the date of these presents, and also, &c. (*to pay interest half-yearly, supra, p. 641*): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid the said A. B., as mortgagee, hereby conveys, and

Recite that mortgage debt is still due.

Agreement for transfer and for making further advance.

Consideration to mortgagee.

Assignment of mortgage debt.

Covenant by mortgagor to pay aggregate sum and interest.

Conveyance to transferee,

TRANSFER OF
MORTGAGE
OF FREEHOLDS
WHERE
FURTHER SUM
IS ADVANCED.

subject to
proviso for
redemption.

the said C. D., as beneficial owner, hereby conveys and confirms unto the said E. F., ALL, &c. (*parcels*), To HOLD the same unto and to the use of the said E. F., in fee simple, freed from all right or equity of redemption by virtue of the hereinbefore recited indenture, but subject to the following proviso: (namely), PROVIDED ALWAYS, that if the sum of £700, with interest thereon, shall be paid on the — day of — next, according to the foregoing covenant in that behalf, then and in such case the said premises shall at the request and cost of the said C. D., his heirs or assigns, be reconveyed to him or them (*Covenant by C. D. for insurance, if applicable, suprad, p. 532*).

IN WITNESS, &c.

No. LXXXIV.

TRANSFER
WHERE
FURTHER SUM
IS ADVANCED,
INDORSED OR
WRITTEN AT
END.

Parties.

Recite that
mortgage debt
remains due.

Transfer of
mortgage
debt, &c.

Conveyance
by transferor,

TRANSFER of MORTGAGE of FREEHOLDS *where a FURTHER SUM is advanced to the MORTGAGOR (by deed indorsed on or written at the end of the mortgage).*

THIS INDENTURE, made the — day of —, BETWEEN the within- [*or above-*] named A. B. (*transferor*), of the first part, the within- [*or above-*] named C. D. (*mortgagor*), of the second part, and E. F., of, &c. (*transferee*) of the third part: WHEREAS the principal sum of £500 secured by the within- [*or above-*] written indenture remains owing, but all interest thereon has been paid up to the date of these presents: (*Recite agreement for transfer and new advance as in last Precedent*). NOW THIS INDENTURE WITNESSETH, that, &c. (*Transfer of mortgage debt as in last Precedent, substituting the "within-written," or "the above-written indenture," for "the hereinbefore recited indenture"*): AND THIS INDENTURE FURTHER WITNESSETH, that in further pursuance of the said agreement, and in consideration of, &c. (*Covenant by C. D. to pay aggregate principal sum and interest as in last Precedent*): AND THIS INDENTURE ALSO WITNESSETH, that for the considerations aforesaid the said A. B., as mort-

gagee, hereby conveys, and the said C. D., as beneficial owner, hereby conveys and confirms, unto the said E. F., ALL the lands and hereditaments comprised in the within- [*or above*] written indenture. To HOLD the same unto and to the use of the said E. F., in fee simple, freed from all right or equity of redemption under the within-written indenture, but subject to the following proviso: (namely), PROVIDED ALWAYS, that if the sum of £700 with interest thereon shall be paid on the — day of —, according to the foregoing covenant in that behalf, the premises shall, at the request of the said C. D., his heirs or assigns, be reconveyed to him or them.

IN WITNESS, &c.

TRANSFER
WHERE
FURTHER SUM
IS ADVANCED,
INDORSED OR
WRITTEN AT
END.

and confirma-
tion by mort-
gagor, of
hereditaments
to transferee.
Proviso for
redemption.

No. LXXXV.

STATUTORY TRANSFER *and* STATUTORY MORTGAGE *combined (a).*

STATUTORY
TRANSFER AND
STATUTORY
MORTGAGE.

THIS INDENTURE, made by way of statutory transfer of mortgage and statutory mortgage the — day of —, BETWEEN A. B., of, &c., of the first part; C. D., of, &c., of the second part, and E. F., of, &c., of the third part, supplemental to an indenture made by way of statutory mortgage dated the — day of —, and made between, &c., being a mortgage of lands and hereditaments, situate at, &c., for securing the sum of £— and interest: WHEREAS the principal sum of £— only remains due in respect of the said mortgage as the mortgage-money, and no interest is now due and payable thereon: AND WHEREAS the said C. D. is seised in fee simple of the land comprised in the said mortgage, subject to that mortgage: NOW

(a) This is Form (C.) in the 3rd Schedule to the Act, with respect to which sect. 27 provides, that if the deed of transfer is made in the Form (C.), it shall, by virtue of the Act, operate not only as a statutory transfer of mortgage, but also as a statutory mortgage, and the provisions of this section shall have effect in relation thereto accordingly; but it shall not be liable to any increased stamp duty by reason only of its being designated a mortgage.

**STATUTORY
TRANSFER AND
STATUTORY
MORTGAGE.**

Transfer of
benefit of
mortgage,

and convey-
ance of parcels
to transferees.

THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— now paid to the said A. B. by the said E. F., of which sum the said A. B. hereby acknowledges the receipt, and the said C. D. hereby acknowledges the payment and receipt as aforesaid (b), the said A. B., as mortgagee, hereby conveys and transfers to the said E. F. the benefit of the said mortgage: AND THIS INDENTURE ALSO WITNESSETH, that for the same consideration the said A. B., as mortgagee and according to his estate, and by direction of the said C. D., hereby conveys, and the said C. D., as beneficial owner, hereby conveys and confirms to the said E. F., All, &c., To HOLD to and to the use of the said E. F., in fee simple, for securing payment on the —— day of ——, of (c) the sum of £——, as the mortgage-money, with interest thereon at the rate of [*four*] per centum per annum.

IN WITNESS, &c.

[*Or in case of further advance, after aforesaid at (b) insert and also in consideration of the further sum of £—— now paid by the said E. F. to the said C. D., of which sum the said C. D. hereby acknowledges the receipt; and after of at (c) insert the sums of £—— and £——, making together.*]

* * Variations to be made, as required, in case of the deed being made by indorsement, or in respect of any other thing.

No. LXXXVI.

**TRANSFER OF
MORTGAGE
OF COPYHOLDS
WITH CONCURRENCE OF
MORTGAGOR.**

Parties.

TRANSFER of MORTGAGE of COPYHOLDS, with the CONCURRENCE of the MORTGAGOR (a) (*by indorsement*).

THIS INDENTURE, made the —— day of ——, BETWEEN the within-named A. B. (*mortgagee*), of the first part, the

Proper mode
of transferring
copyholds.

(a) Where the concurrence of the mortgagor can be obtained, and the mortgagee has not been admitted on the conditional surrender, the proper mode of effecting a transfer of a mortgage of copyholds is by entering up

within-named C. D. (*mortgagor*), of the second part, and E. F., of, &c. (*transferee*), of the third part: WHEREAS in pursuance of the covenant in that behalf contained in the within-written indenture, the said C. D. did on the — day of —, out of court surrender into the hands of the lord of the said manor the within-described copyhold hereditaments, to the use of the said A. B., his heirs and assigns, subject to a condition for making void the said surrender upon payment to the said A. B. of the sum of £— with interest for the same, after the rate of £— per cent. per annum, on the — day of — then next: AND WHEREAS the said A. B. has not been admitted tenant to the said copyhold hereditaments pursuant to the said surrender: AND WHEREAS (*Recite that mortgage debt is due, and agreement for transfer, supra*, p. 647): NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*Assignment of mortgage debt, &c., by A. B. to E. F., supra*, p. 647): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said C. D., as beneficial owner, hereby covenants with the said E. F., that he the said C. D. will forthwith, at his own cost, surrender, or cause to be surrendered, into the hands of the lord of the said manor, according to the custom of the said manor, ALL the copyhold hereditaments comprised in and covenanted to be surrendered by the within-written indenture: To THE USE of the said E. F., in customary fee simple, according to the custom of the said manor, at and under the rents, heriots, suits, and services therefor due and of right accustomed, subject to a condition for making void the said surrender upon payment to the said E. F., on the — day of — next, of the said sum of £—, with interest for the same after the rate of £— per cent. per annum, computed from the date of these presents: AND IT IS HEREBY AGREED AND DECLARED, that satisfaction shall be entered up on the said conditional surrender of the — day of — at the cost of the said C. D. IN WITNESS, &c.

TRANSFER OF
MORTGAGE
OF COPYHOLDS
WITH CONCUR-
RENCE OF
MORTGAGOR.

Recite condi-
tional sur-
render to
mortgagee.

That mort-
gagee has not
been admitted.

Transfer of
mortgage
debt.

Mortgagor
covenants to
surrender
copyholds to
use of trans-
feree,

subject to
condition for
redemption.

Agreement
for entering up
satisfaction on
former condi-
tional
surrender.

satisfaction on the former conditional surrender, and having a new conditional surrender to the transferee. If, by reason of the disability of the mortgagor, or any other reason, his concurrence cannot be obtained, the only mode of effecting a transfer seems to be that adopted in Precedent No. LXXXIX., *infra*, unless the transferee is willing to allow the right to admittance on the old conditional surrender to remain vested in the transferor as a trustee for him until a new conditional surrender can be obtained from the mortgagor.

No. LXXXVII.

WARRANT TO
ENTER UP
SATISFACTION.

WARRANT to ENTER up SATISFACTION of CONDITIONAL
SURRENDER.

MANOR of —, in } I, A. B., of, &c., DO HEREBY AC-
the County of — } KNOWLEDGE that I have this day
received of and from E. F., of, &c., by the direction of C. D.,
of, &c., the sum of £—, in satisfaction of all principal moneys
and interest secured by a conditional surrender made to me by
the said C. D. of certain copyhold hereditaments held of the
said manor, and bearing date the — day of —; and I do
hereby direct and require the steward of the said manor to enter
up satisfaction thereof on the court rolls of the said manor, and
for so doing this shall be his sufficient warrant and authority.
DATED this — day of —.

(Signed) A. B.

No. LXXXVIII.

CONDITIONAL
SURRENDER ON
TRANSFER.

CONDITIONAL SURRENDER by MORTGAGOR to TRANS-
FEREE of MORTGAGE.

MANOR of —, in } BE IT REMEMBERED, that on this
the County of — } — day of —, C. D., of, &c., comes
before X. Y., of, &c., steward of the said manor, out of court,
and in consideration of the sum of £— paid by E. F., of,
&c., to A. B., of, &c., by the direction of him the said C. D., in
satisfaction of all principal moneys and interest secured to the
said A. B. by a conditional surrender of the copyhold heredita-
ments hereinafter described, which conditional surrender is dated
the — day of —, surrenders into the hands of the lord of
the said manor, by the hands and acceptance of the said steward,
according to the custom of the said manor, ALL, &c. (*parcels*):

TO THE USE of the said E. F. and his heirs, at the will of the lord, according to the custom of the said manor, at and under the rents, heriots, suits, and services therefor due and of right accustomed: SUBJECT NEVERTHELESS to this condition, that if the said C. D. shall, on the — day of — next, pay to the said E. F. the sum of £—, with interest for the same after the rate of £— per cent. per annum, computed from the date of this surrender (being the same principal money and interest as are secured by the covenant of the said C. D., contained in an indenture bearing even date herewith), then and in such case this surrender shall be void and of no effect, but otherwise shall remain in full force and virtue.

CONDITIONAL
SURRENDER ON
TRANSFER.

Taken and accepted the day and year above-written, by me

(Signed) X. Y. (steward),
Steward of the manor.

No. LXXXIX.

TRANSFER of MORTGAGE of COPYHOLDS.—*The MORTGAGOR being dead, LEAVING an INFANT HEIR, his WIDOW and ADMINISTRATRIX JOINS in the TRANSFER (by Indorsement, or by deed written at the end of the mortgage).*

OF COPYHOLDS
WITH CON-
CURRENCE OF
ADMINISTRA-
TRIX OF
MORTGAGOR.

THIS INDENTURE, made the — day of —, BETWEEN the within-named [or above-named] A. B. (*mortgagee*), of the first part, C. D., of, &c. (*administratrix of mortgagor*), of the second part, and E. F., of, &c. (*transferee*), of the third part: WHEREAS (*Recite conditional surrender by X. Y. to A. B. and that A. B. has not been admitted, suprd, p. 657*): AND WHEREAS the said X. Y. died on the — day of — intestate, leaving the said C. D. his widow, and N. O. his only son and heir at law, and the said N. O. is under the age of twenty-one years: AND WHEREAS letters of administration of the estate and effects of the said

Parties.

Recite con-
ditional sur-
render to use
of mortgagee,
and that he
has not been
admitted.
Death of mort-
gagor in-
testate.
Administra-
tion granted

OF COPYHOLDS
WITH CON-
CURRENCE OF
ADMINISTRA-
TION OF
MORTGAGOR.

to mortgagor's
widow.

That mortgage
money remains
due.

Agreement for
transfer.

First witness-
ing part.

Transfer
of debt.

Second wit-
nessing part.

Covenant by
mortgagee to
procure him-
self to be
admitted, and
after admit-
tance to sur-
render to use
of transferee,

subject to
right of re-
demption,

and in the
meantime to
stand seised of
said copyhold
premises in
trust for
transferee.

X. Y. were, on the — day of —, granted to the said C. D. by the Probate Registry at — of the High Court of Justice: AND WHEREAS the principal sum of £—, secured by the within-written [*or above-written*] indenture, still remains due, but all interest thereon has been duly paid up to the date of these presents: AND WHEREAS the said A. B. lately applied to the said C. D. to pay to him the said sum of £—, and the said C. D., not having moneys in her hands available for such purpose, hath requested the said E. F. to pay the same upon having a transfer of the said mortgage, in the manner hereinafter mentioned, which the said E. F. has agreed to do: NOW, &c. (*Assignment of mortgage debt by A. B. to E. F., supra, p. 647*): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B., as mortgagee, hereby covenants with the said E. F., THAT he the said A. B., will forthwith, at the cost of the said C. D., or of the estate of the said X. Y., deceased, procure himself to be admitted tenant to the copyhold hereditaments described in the within-*[or above-]* written indenture pursuant to the said surrender of the — day of —, and will as soon as conveniently can be after such admittance, at the like cost, surrender the same copyhold hereditaments into the hands of the lord of the said manor, To THE USE of the said E. F. in customary fee simple, according to the custom of the said manor, at and under the rents, heriots, suits, and services therefor due and of right accustomed, subject to such right or equity of redemption as is now subsisting in the said hereditaments by virtue of the said conditional surrender, dated the — day of —, and the within-written indenture: AND WILL in the meantime, and until such surrender, stand and be seised and possessed of the said copyhold hereditaments, IN TRUST for the said E. F. in customary fee simple, subject as aforesaid.

IN WITNESS, &c.

No. XC.

ADMISSION of MORTGAGEE to COPYHOLDS, and SURRENDER to TRANSFEREE, PURSUANT to the COVENANT in the LAST PRECEDENT, and ADMISSION of TRANSFEREE.

ADMISSION AND
SURRENDER
ON TRANSFER.

THE MANOR of — } WHEREAS on the — day of —, Recite con-
in the county of —. } 18—, X. Y., of, &c., one of the copy- ditional sur-
 hold tenants of this manor, came before P. Q., steward of the render to rise
 said manor, out of court, and in consideration of the sum of of mortgage.
 £— to the said X. Y. paid by A. B., of, &c., the said X. Y.
 surrendered into the hands of the lord of the said manor, ALL,
 &c. (*parcels*), with their appurtenances, to the use of the said
 A. B., his heirs and assigns, according to the custom of the said
 manor, at and under the rents, heriots, suits, and services there-
 for due and of right accustomed, subject nevertheless to a con-
 dition for making void the said surrender upon payment by the
 said X. Y., unto the said A. B., of the sum of £—, with
 interest for the same after the rate of £— per cent. per
 annum, on the — day of — then next: AND WHEREAS That default
 default was made in payment of the said principal sum of was made.
 £—, on the day mentioned in the said condition, and the
 same principal sum still remains due and owing to the said
 A. B., but all interest for the same has been paid up to this
 day: NOW BE IT REMEMBERED, that on this — day
 of —, 18—, the said A. B. comes before the said P. Q. out
 of court and prays to be admitted tenant to the said copyhold Mortgagee
 hereditaments surrendered to his use as aforesaid, To which prays to be
 said copyhold hereditaments the lord of the said manor by the admitted.
 said steward grants seisin thereof by the rod, To HOLD the same Grant to, and
 unto the said A. B. and his heirs, at the will of the lord, according admittance of,
 to the custom of the said manor, at and under the rents, heriots, mortgagee.
 suits, and services therefor due and of right accustomed, And so
 (saving the right of the lord and the right of any person or per-
 sons having an equity of redemption in the said hereditaments)
 the said A. B. is admitted tenant thereof and pays to the lord
 on such his admittance a fine certain of £—, and his fealty is

ADMISSION AND
SURRENDER
ON TRANSFER.

Mortgagee
surrenders

to use of
transferee,

subject to
right of
redemption.

Admittance
of transferee.

respited: AND BE IT FURTHER REMEMBERED, that on this — day of —, 18—, the said A. B. comes before the said steward out of court, and in consideration of the sum of £— paid to him by E. F., of, &c., in satisfaction of the said principal sum of £— due and owing on the said conditional surrender as aforesaid, surrenders into the hands of the lord of the said manor, by the hands and acceptance of his said steward, according to the custom of the said manor, ALL the copyhold hereditaments to which he the said A. B. was admitted as aforesaid, with their appurtenances, to the use of the said E. F., and his heirs, at the will of the lord according to the custom of the said manor, and at and under the rents, heriots, suits, and services therefor due and of right accustomed, subject nevertheless to such equity of redemption as is now subsisting in the said premises under the aforesaid conditional surrender of the — day of —, 18—: AND BE IT FURTHER REMEMBERED, that on this — day of —, 18—, the said E. F. comes before the said steward out of court and prays to be admitted, &c. (*Admission of E. F. in the same form as the admission of A. B. supra.*)

No. XCI.

OF MORTGAGE
OF FREEHOLDS
AND COPY-
HOLDS WHERE
NO SURRENDER
HAS BEEN
MADE.

Parties.

Recite that no
surrender has
been made.

First witness-
ing part.

TRANSFER of MORTGAGE of FREEHOLDS, and of COPY-
HOLDS where NO SURRENDER has been MADE (by Indorse-
ment or by deed written at the end of the mortgage).

THIS INDENTURE, made the — day of —, BETWEEN the within- [or above-] named A. B. (*mortgagee*), of the first part, the within- [or above-] named C. D. (*mortgagor*), of the second part, and E. F. of, &c. (*transferee*), of the third part: WHEREAS no surrender has been made of the copyhold hereditaments comprised in the within- [or above] written indenture pursuant to the covenant therein contained (*Recite that principal sum remains owing, and agreement for transfer, supra, p. 647*): NOW THIS INDENTURE WITNESSETH, &c. (*As-*

signment of mortgage debt, &c., by A. B. to E. F., supra, p. 647): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B., as mortgagee, at the request of the said C. D. hereby conveys unto the said E. F., ALL the freehold and copyhold hereditaments conveyed and covenanted to be surrendered respectively by the within- [or above-] written indenture, To HOLD the same unto and to the use of the said E. F., in fee simple, subject to such right or equity of redemption as is now subsisting therein under the within- [or above-] written indenture, and to the intent that, as regards the said copyhold hereditaments, the same shall be surrendered to the use of the said E. F., in customary fee simple, pursuant to the covenant in that behalf contained in the said indenture: PROVIDED ALWAYS and it is hereby declared that the time for payment of the said principal sum hereby assigned shall be extended to the — day of — next, and that the within- [or above-] written indenture and these presents shall henceforth take effect as if the said principal sum had been made payable by the said indenture on the said — day of — next, instead of on the day therein named in that behalf.

IN WITNESS, &c.

OF MORTGAGE
OF FREEHOLDS
AND COPY-
HOLDS WHERE
NO SURRENDER
HAS BEEN
MADE.

Transfer of
mortgage
debt.

Second wit-
nessing part.

Conveyance
of freeholds
and copyholds,
to transferee,
subject to
equity of
redemption.

Time for pay-
ment to be
extended to a
day specified

XCII.

TRANSFER of a MORTGAGE of FREEHOLDS and LEASE- HOLDS.

OF MORTGAGE
OF FREEHOLDS
AND LEASE-
HOLDS.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*mortgagee*), of the one part, and C. D., of, &c. (*transferee*), of the other part (*Recite indenture of lease and mortgage of freeholds and leaseholds to A. B. to secure £500—that mortgage debt is still due, and agreement by transferee to pay the sum on having transfer—assignment of mortgage debt and interest and benefit of securities to transferee—conveyance of freeholds to transferee subject to equity of redemption, supra, p. 647*). AND THIS INDENTURE ALSO WITNESSETH, that in consideration

Parties.

Conveyance
of freeholds
by mortgagee
to transferee,
subject to
equity of
redemption.

OF MORTGAGE
OF FREEHOLDS
AND LEASE-
HOLDS.

Assignment
of leaseholds
by mortgagee
to transferee,
subject to
equity of
redemption.

of the premises the said A. B., as mortgagee, hereby assigns unto the said —; ALL the hereditaments comprised in the said recited indenture of lease, To HOLD the same unto the said C. D. for all the residue now unexpired of the said term of — years granted therein by the said recited indenture of lease as aforesaid, subject to such right or equity of redemption as is now subsisting therein by virtue of the said recited indenture of mortgage.

IN WITNESS, &c.

No. XCIII.

TRANSFER OF
MORTGAGE OF
POLICY, ETC.,
THE DEBT
ADDITIONALLY
SECURED
BY THE
MORTGAGOR.

TRANSFER of MORTGAGE of a POLICY of ASSURANCE and a sum of STOCK, in which the MORTGAGOR joins for the purpose of securing the payment of the DEBT by a charge on ADDITIONAL PROPERTY.

Parties.

Recite inden-
ture under
which mort-
gagor became
interested in a
reversionary
share in stock.

Mortgage of
policy and
stock.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*mortgagee*), of the first part, C. D., of, &c. (*mortgagor*), of the second part, and E. F., of, &c. (*transferee*), of the third part: WHEREAS (*Recite policy of assurance on the life of C. D. to secure the payment of £100 to his representatives on his death*): AND WHEREAS under an indenture dated, &c., and made between (*parties*), the said C. D. became entitled to a certain sum of £—— £2½ per cent. Consolidated Stock, standing in the names of — and — in the books of the Governor and Company of the Bank of England as trustees thereof, expectant on the death of X. Y., of, &c.: AND WHEREAS by an indenture of mortgage dated, &c., and made between the said C. D. of the one part, and the said A. B. of the other part, the said C. D., in consideration of the sum of £500 paid to him by the said A. B., did assign the said policy of assurance and the moneys thereby assured, and the said sum of £—— Consolidated Stock so expectant as aforesaid, and the interest and dividends thereof respectively, unto the said A. B., by way of security for the payment by the said C. D., unto the said A. B., of the sum of £500 and interest

thereon after the rate of £4 per cent. per annum, as therein mentioned: AND WHEREAS the said sum of £500 is still due and owing on the security of the said recited indenture of mortgage, but all interest thereon hath been paid up to the date of these presents: AND WHEREAS under or by virtue of the last will of G. H., late of, &c., deceased, dated the — day of —, the said C. D. is entitled to a certain annuity of £40 during his life, which is charged upon an estate situate, &c., which by the said will was devised to — in fee simple: AND WHEREAS the said A. B. having occasion for the said sum of £500, the said E. F. hath at the request of the said C. D. agreed to pay the same to the said A. B., on having a transfer of the said mortgage in manner hereinafter mentioned, and also on having the payment of the said mortgage debt and the interest thereof further secured as hereinafter mentioned: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £500 to the said A. B. now paid by the said E. F. at the request of the said C. D., THE SAID A. B., as mortgagee, hereby assigns (*Assignment of mortgage debt, &c., to E. F., supra*, p. 647). AND THIS INDENTURE FURTHER WITNESSETH, that for the consideration aforesaid, THE said A. B., as mortgagee, at such request as aforesaid, hereby assigns, and the said C. D., as beneficial owner, hereby assigns and confirms unto the said E. F., THE hereinbefore recited policy of assurance, and the moneys, bonuses, and advantages thereby assured or to become payable thereunder, and also the said sum of £—— £2½ per cent. Consolidated Stock, and the dividends and annual income thereof respectively: To HOLD the same (subject, nevertheless, as to the said sum of £—— £2½ per cent. Consolidated Stock to the interest of the said X. Y. therein as aforesaid), unto the said E. F., subject to such right or equity of redemption as is now subsisting therein by virtue of the hereinbefore recited indenture of mortgage: AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said C. D., as beneficial owner, hereby conveys and assigns unto the said E. F., THE said annuity of £40 to which the said C. D. is entitled during his life under the said will of the said G. H. as aforesaid, and all sums now due and henceforth to become due on account thereof, and all powers and remedies for securing, recovering, and en-

TRANSFER OF
MORTGAGE OF
POLICY, ETC.,
THE DEBT
ADDITIONALLY
SECURED
BY THE
MORTGAGOR.

That principal
sum is still
due.

Will under
which mort-
gagor is
entitled to
annuity.

Agreement
for transfer.

Assignment
of mortgage
debt.

Assignment
of policy and
stock,

to transferee,
subject to
equity of
redemption.

Mortgagor
conveys
annuity

TRANSFER OF
MORTGAGE OF
POLICY, ETC.,
THE DEBT
ADDITIONALLY
SECURED
BY THE
MORTGAGOR.

to transferee,
subject to
right of re-
demption, &c.

forcing payment thereof: To HOLD the same unto the said E. F., subject to the same or the like right of redemption as is now subsisting in the said policy of assurance, and sum of £—— £2½ per cent. Consolidated Stock, and with and under the same or the like powers and privileges as are in and by the hereinbefore recited indenture of mortgage conferred upon the said A. B., in relation to the said policy of assurance and sum of £—— Consolidated Stock respectively.

IN WITNESS, &c.

No. XCIV.

TRANSFER ON
CHANGE OF
TRUSTEES.

TRANSFER of MORTGAGE of FREEHOLDS and LEASEHOLDS on the Change of one of Two TRUSTEES (a).

Parties.

Recite mort-
gage to trans-
ferors,
that principal
sum is still
due.

That trans-
ferees have
become en-
titled, and
agreement for
transfer.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c., and C. D., of, &c. (*transferors*), of the one part, the said C. D. and E. F., of, &c. (*transferees*), of the other part, (*Recite mortgage of freeholds and leaseholds to A. B. and C. D. to secure £1,000*): AND WHEREAS the said sum of £1,000 is still owing on the security of the said recited indenture, but all interest thereon has been paid up to the date of these presents: AND WHEREAS the said C. D. and E. F. have now become entitled to the said principal sum of £1,000 upon a joint account, and in consequence thereof the said A. B. and C. D. have agreed to make such transfer to them of the said mortgage as is hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the premises, THE SAID A. B. and C. D., as mortgagees, hereby assign unto the said

Transfer on
appointment
of new trustee
should not dis-
close trust.

(a) It has been already stated why trustees advancing trust funds on mortgage generally take the security in such a form as not to disclose the fact that the money advanced is held on a trust. (*Supra*, p. 535.) For the same reason it is important on the appointment of a new trustee of the funds, so to frame the transfer of the debt and securities that the trusts shall continue to be kept off the title. Hence the present form, in which it is sufficient to recite that in the events that have happened, C. D. and E. F. have become entitled, and to draw the transfer to them, so that the debt and securities may vest in them as joint tenants. (See *In re Harman and Uxbridge, &c. Rail. Co.*, 24 Ch. 720.)

C. D. and E. F. (b): (*Assignment of mortgage debt, &c., supra*, p. 647): To HOLD the same unto the said C. D. and E. F.: AND THIS INDENTURE FURTHER WITNESSETH, that in consideration of the premises, THE said A. B. and C. D., as mortgagees, hereby convey unto the said C. D. and E. F. (b), ALL the freehold messuages, lands, and hereditaments comprised in the hereinbefore recited indenture: To HOLD the same unto and to the use of the said C. D. and E. F., in fee simple, subject to such right or equity of redemption as is now subsisting in the said premises under or by virtue of the said recited indenture: AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the premises, the said A. B. and C. D., as mortgagees, hereby assign unto the said C. D. and E. F. (c), ALL the leasehold hereditaments and premises comprised in the hereinbefore recited indenture: To HOLD the same unto the said C. D. and E. F. for all the residue now unexpired of the said term granted therein by the hereinbefore recited indenture, subject to such right or equity of redemption as is now subsisting therein by virtue of the same indenture.

IN WITNESS, &c.

TRANSFER ON
CHANGE OF
TRUSTEES.

Transfer of
mortgage
debt.
Conveyance
of parcels to
use of trans-
ferees, subject
to subsisting
right of
redemption.

Assignment
of leaseholds

to transferees
for residue of
term.

No. XCV.

TRANSFER of PART of MONEY secured by MORTGAGE, and
CONVEYANCE of the MORTGAGED PROPERTY, so as to
rest in TRANSFEROR and TRANSFEEE jointly (d) (by
indorsement).

TRANSFER OF
PART OF
MORTGAGE.

THIS INDENTURE, made the — day of —, BETWEEN Parties.
the within-named A. B. (mortgagee), of the one part, and

(b) By sect. 50 of the Conveyancing Act, 1881, it is provided that freehold land, or a thing in action, may be conveyed by a person to himself jointly with another person by the like means by which it might be conveyed by him to another person.

(c) By the 22 & 23 Vict. c. 35, s. 21, it is provided, that any person shall have power to assign personal property by law assignable, including chattels real, directly to himself, and another person or persons, or corporation, by the like means as he might assign the same to another person.

(d) Sometimes the transferee of part is satisfied with a declaration of trust from the mortgagee, without any conveyance of the mortgaged property to rest in the two jointly.

Freeholds and
things in
action may be
conveyed by a
person to him-
self and
another.

Personal prop-
erty may be
assigned by a
person to him-
self and
another.

**TRANSFER OF
PART OF
MORTGAGE.**

Mortgagee
assigns part of
mortgage debt
to transferee,

and conveys
mortgaged
property to
himself and
transferee
jointly, sub-
ject to equity
of redemption.

C. D., of, &c. (*transferee*), of the other part, WITNESSETH, that in consideration of the sum of £500 now paid to the said A. B. by the said C. D. (the receipt whereof the said A. B. hereby acknowledges), THE said A. B., as mortgagee, hereby assigns unto the said C. D. THE sum of £500, part of the principal sum of £2,000 secured by the within-written indenture: AND all interest henceforth to become due on the said sum of £500: To HOLD the same unto the said C. D. absolutely: AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid the said A. B., as mortgagee, hereby conveys unto the said A. B. and C. D., All the hereditaments comprised in the within-written indenture: To HOLD the same unto and to the use of the said A. B. and C. D., in fee simple, subject to such right or equity of redemption as is now subsisting therein under the within-written indenture, upon payment to the said C. D. of the said sum of £500 and interest hereby assigned, and to the said A. B. of the sum of £1,500 (residue of the said principal sum of £2,000), and the interest thereof.

IN WITNESS, &c.

No. XCVI.

**TRANSFER OF
PART
OF MONEY
SECURED BY
CONTRIBUTORY
MORTGAGE.**

TRANSFER of PART of MONEY secured on a CONTRIBUTORY MORTGAGE where the TRANSFEROR holds a DECLARATION of TRUST executed to him by the MORTGAGEES
(written at the foot of the declaration of trust).

KNOW ALL MEN by these presents that I, the above-named A. B., in consideration of the sum of £— now paid to me by C. D., of, &c. (the receipt whereof I hereby acknowledge), do hereby assign unto the said C. D. the principal sum of £— to which I am entitled under the above-written indenture and the declaration of trust thereby made: AND all interest henceforth to become due thereon: To HOLD the same unto the said C. D. absolutely: And I hereby covenant with the said C. D.

that I have not received any part of the said sum of £——, and have not done anything whereby I am prevented from assigning the same to him in manner aforesaid.

IN WITNESS, &c.

TRANSFER OF
PART
OF MONEY
SECURED BY
CONTRIBUTORY
MORTGAGE.

No. XCVII.

TRANSFER of Two several MORTGAGE DEBTS and the SECURITIES for EACH, and CONVEYANCE of ADDITIONAL PROPERTY by MORTGAGOR to the intent that all the PROPERTY vested in TRANSFEREE may be a SECURITY for both MORTGAGE DEBTS and a FURTHER ADVANCE.

TRANSFER OF
SEVERAL
MORTGAGE
DEBTS AND
THEIR SECURI-
TIES, AND
ADDITIONAL
PROPERTY
CHARGED WITH
OLD AND
FURTHER AD-
VANCE.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*transferor of the first mortgage*), of the first part, C. D. of, &c. (*transferor of the second mortgage*), of the second part, E. F. of, &c. (*mortgagor*), of the third part, and G. H. of, &c. (*transferee*), of the fourth part: WHEREAS (*Recite mortgage to A. B. of "the hereditaments firstly hereinafter described," to secure £500 and interest*): AND WHEREAS (*Recite mortgage to C. D. of "the hereditaments secondly hereinafter described," to secure £200 and interest*): AND WHEREAS the said E. F. is seised of the hereditaments firstly, secondly, and thirdly hereinafter described for an estate in fee simple in possession, subject as to the said hereditaments firstly and secondly hereinafter described to the hereinbefore recited mortgages respectively, but free from all other incumbrances; AND WHEREAS the said sum of £500 remains owing on the security of the said indenture of the —— day of ——, but all interest on the same has been paid up to the date of these presents: AND WHEREAS the said sum of £200 remains owing on the security of the said indenture of the —— day of ——, but all interest on the same has been paid up to the date of these presents: AND WHEREAS the said G. H. hath agreed at the request of the said E. F. to pay to the said A. B. the sum of £500, and to the said C. D. the sum of £200, and to lend to the said E. F. the further

Parties.

Recite two mortgages of separate properties.

Seisin in fee of mortgagor.

That mortgage money remains owing on both mortgages.

Agreement for transfer and further advance.

TRANSFER OF
SEVERAL
MORTGAGE
DEBTS AND
THEIR SECURI-
TIES, AND
ADDITIONAL
PROPERTY
CHARGED WITH
OLD AND
FURTHER AD-
VANCE.

Witnessing
part.

One mort-
gagee assigns
his mortgage
debt to new
mortgages.

Another mort-
gagee assigns
his debt.

Mortgagees
and mortgagor
convey the
hereditaments
comprised in
the existing
mortgages,
and additional
hereditaments

to new mort-
gagee, subject
to proviso for
redemption.

sum of £400 on having transfers of the said several mortgage debts of £500 and £200 respectively, and the interest thereof, and the securities for the same respectively, and upon having the repayment of the said sums of £500, £200, and £400 respectively (making together the sum of £1,100), with interest for the same respectively, secured in manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £500 now paid by the said G. H. to the said A. B., at the request of the said E. F. (*the receipt, &c.*), THE SAID A. B., as mortgagee, hereby assigns, &c. (*assignment of mortgage debt of £500, and interest, and the securities for the same, supra, p. 647*): AND THIS INDENTURE FURTHER WITNESSETH, that in consideration of the sum of £200 now paid by the said G. H. to the said C. D., at the request of the said E. F. (*the receipt, &c.*), THE SAID C. D., as mortgagee, hereby assigns, &c. (*assignment of mortgage debt of £200, and interest, and the securities for the same, supra, p. 647*): AND THIS INDENTURE FURTHER WITNESSETH, that in consideration of the several sums of £500 and £200 paid by the said G. H., to the said A. B. and C. D. respectively as hereinbefore is mentioned, and in consideration of the sum of £400 now paid by the said G. H. to the said E. F. (*the receipt, &c.*), THE SAID E. F. hereby covenants with the said G. H., &c. (*to pay principal sum of £1,100 and interest, supra, p. 531*); AND THIS INDENTURE ALSO WITNESSETH, that for the considerations aforesaid, the said A. B., as mortgagee, as to the hereditaments firstly hereinafter described, and the said C. D., as mortgagee, as to the hereditaments secondly hereinafter described, at the request of the said E. F., hereby respectively convey, and the said E. F., as beneficial owner, as to all the hereditaments hereinafter described, hereby conveys and confirms unto the said G. H., FIRST, ALL, &c. (*parcels, as described in the mortgage to A. B.*), AND all other (if any) the hereditaments comprised in the said indenture of the — day of —: SECONDLY, ALL, &c. (*parcels, as described in mortgage to C. D.*), AND all other (if any) the hereditaments comprised in the said indenture of the — day of —: AND, THIRDLY, ALL, &c. (*additional parcels*): To HOLD the same unto and to the use of the said G. H. in fee simple, freed and discharged as to the hereditaments comprised in the hereinbefore recited indentures of mortgage respectively

from all right or equity of redemption now subsisting therein under or by virtue of the same indentures respectively, but subject as to all the said hereditaments to the proviso for redemption following, namely, that if, &c. (*proviso for redemption on payment of said £1,100 and interest. Declaration as to leasing power, if desired, supra, p. 532.*)

IN WITNESS, &c.

TRANSFER OF
SEVERAL
MORTGAGE
DEBTS AND
THEIR SECURI-
TIES, AND
ADDITIONAL
PROPERTY
CHARGED WITH
OLD AND
FURTHER AD-
VANCE.

No. XCVIII.

RECONVEYANCE of LANDS by MORTGAGEE on PAYMENT of DEBT and INTEREST. RECONVEYANCE BY MORTGAGEE.

(A.) *Where the mortgage deed is recited.*

THIS INDENTURE, made the — day of —, BETWEEN Parties.
A. B., of, &c. (*mortgagee*), of the one part, and C. D., of, &c. (*mortgagor*), of the other part: WHEREAS by an indenture Recite mortgage.
dated, &c., and made, &c. (*date and parties*), All, &c. (*parcels*) (a) were conveyed by the said C. D. unto and to the use of the said A. B. in fee simple by way of mortgage for securing payment by the said C. D. to the said A. B. of the sum of £—, and interest thereon: NOW THIS INDENTURE WITNESSETH, that in consideration of all principal money and interest secured by the said indenture of mortgage having been paid (the receipt whereof the said A. B. acknowledges), THE SAID A. B., as mortgagee, hereby conveys unto the said C. D., ALL the lands and hereditaments comprised in the said indenture; To HOLD the same unto and to the use of the said C. D., in fee simple, absolutely discharged from all principal money and interest secured by and from all claims and demands under the said indenture. Mortgagee reconveys to mortgagor.

IN WITNESS, &c.

(a) For the mode of describing the parcels, see p. 641, note (b).

RECONVEYANCE
BY
MORTGAGEE.

(B.) *Where the deed is expressed to be supplemental to the indenture of mortgage.*

By supplemental deed.

THIS INDENTURE, made, &c.; (*date and parties*), and supplemental to an indenture (hereinafter called "the principal indenture"), dated, &c., and made, &c., being a mortgage, &c. (*supra*, p. 641), [*or* "supplemental to the above-written indenture of mortgage (b)"]: WITNESSETH that, &c. (*rest the same as (A.)*).

IN WITNESS, &c.

(C.) *Where the re-conveyance is indorsed on the mortgage (c).*

By indorsement.

THIS INDENTURE, made the — day of —, BETWEEN the within-named A. B. (*mortgagee*), of the one part, and the within-named C. D. (*mortgagor*), of the other part: WITNESSETH, that, &c. (*the rest the same as (A.)*, substituting "the within-written indenture," for "the hereinbefore recited indenture.")

IN WITNESS, &c.

NO XCIX.

RECONVEYANCE
WHERE
THERE HAVE
BEEN FURTHER
CHARGES.

RECONVEYANCE of FREEHOLDS, *where there have been several further CHARGES and TRANSFERS.*

Parties.
Recital that by virtue of deeds in schedule property is vested in mortgagee,

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*mortgagee*), of the one part, and C. D., of, &c. (*mortgagor*), of the other part: WHEREAS, under or by virtue of the several indentures mentioned in the schedule hereto, or some of them, the hereditaments comprised in the indenture of mortgage dated the — day of —, firstly mentioned in the said schedule hereto, became vested in the said A. B. by way of mortgage for securing payment to him of the sum of £—,

(b) See p. 642, note (d).

(c) See p. 642, note (e).

secured by the said indenture of mortgage, and divers other principal sums of money secured by the indentures of further charge also mentioned in the said schedule: AND WHEREAS all principal moneys and interest secured by the said indentures of mortgage and further charge respectively have been paid and satisfied before the execution of these presents, as the said A. B. hereby acknowledges: NOW THIS INDENTURE WITNESSETH, that in consideration of the premises the said A. B., as mortgagee, hereby conveys unto the said C. D. ALL the lands and hereditaments comprised in the said indenture of mortgage, dated the — day of —, To HOLD the same unto and to the use of the said C. D. in fee simple, absolutely discharged from all principal moneys and interest secured by, and all claims and demands under the several indentures of mortgage and further charge mentioned in the schedule hereto.

IN WITNESS, &c.

RECONVEYANCE
WHERE
THERE HAVE
BEEN FURTHER
CHARGES.

that all prin-
cipal moneys
and interest
have been
paid.

Witnessing
part.

Reconveyance.

THE SCHEDULE ABOVE REFERRED TO.

(Date.) INDENTURE between, &c. (*parties*), being a mortgage of lands and hereditaments, called — Farm, situate at, &c., for securing payment by the said C. D. to G. H. of the sum of £—, with interest thereon.

(Date.) INDENTURE between, &c. (*parties*), being a further charge on the said lands and hereditaments for £—, and interest.

(Date.) INDENTURE between, &c. (*parties*), being a transfer of the above mortgage and further charge to I. K.

(*Add other further charges and transfers whereby all the securities become ultimately vested in A. B.*)

No. C.

RECONVEYANCE
BY ADMINIS-
TRATOR OF
MORTGAGEE.

RECONVEYANCE of PROPERTY by ADMINISTRATOR of
MORTGAGEE, on payment of MORTGAGE DEBT and IN-
TEREST (a).

Parties.

That principal
money and
arrear of
interest are
owing.

Desire on part
of mortgagor
to pay off, and
to have here-
ditaments
reconveyed.
Witnessing
part.

Consideration.

Administrator,
by virtue of
Act, conveys
parcels to
mortgagor.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*administrator of mortgagee*), of the one part, and C. D., of, &c. (*mortgagor*), of the other part (*Recite mortgage from C. D. to E. F.—Death of E. F. intestate, and administration granted to A. B.*): AND WHEREAS it appears from an account this day stated between the said A. B. and C. D., that there is now owing to the said A. B., as such administrator as aforesaid, upon or by virtue of the said indenture of mortgage, the sum of £—, for principal money and arrears of interest thereon up to the date of these presents: AND WHEREAS the said C. D. is desirous of paying off the said sum of £—, and of having a reconveyance of the mortgaged hereditaments in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—, to the said A. B. now paid by the said C. D., in full satisfaction of all principal moneys and interest secured by the hereinbefore recited indenture (*the receipt, &c.*), the said A. B., as the personal representative of the said E. F., deceased, by virtue of the power for this purpose given to him by the "Vendor and Purchaser Act, 1874," and of all other powers (if any) him hereunto enabling, hereby conveys unto the said C. D., ALL the lands and hereditaments comprised in the said recited indenture: To HOLD, &c. (*Habendum to C. D. in fee discharged from mortgage debt, supra, p. 671.*)

IN WITNESS, &c.

(a) It is assumed in this case that the mortgagee died before the 1st of January, 1882, as otherwise the mortgaged property would have passed to the administrator under sect. 30 of the Conveyancing Act, 1881, which repeals the 4th section of the Vendor and Purchaser Act, 1874.

No. CI.

SURRENDER *of* MORTGAGED TERM *of* YEARS *by* REPRESENTATIVE *of* MORTGAGEE *on* payment *of* MORTGAGE DEBT *(by* Indorsement*)*.

SURRENDER OF
TERM TO
MORTGAGOR.

THIS INDENTURE, made the — day of —, BETWEEN Parties.

A. B., of, &c. (*executor of mortgage*), of the one part, and the within-named C. D. (*mortgagor*), of the other part (*Recite death of X. Y., the mortgagee, and his will, appointing A. B. executor, and probate by him*): NOW THIS INDENTURE WITNESSETH, that in consideration of all principal money and interest secured by the within-written indenture having been paid and satisfied (the receipt whereof the said A. B., as the personal representative of the said X. Y., deceased, hereby acknowledges): THE SAID A. B., as such personal representative as aforesaid, hereby surrenders unto the said C. D., THE messuage or tenement, farm, lands, hereditaments, and premises comprised in the within-written indenture: To the intent that all the residue now unexpired of the term of 500 years granted therein by the within-written indenture, may forthwith be merged and extinguished in the freehold and inheritance of the same premises.

Surrender by
executor to
intent that
term may
merge.

IN WITNESS, &c.

CII.

RECONVEYANCE *of* FREEHOLDS *by* the PERSONAL REPRESENTATIVES *of* the TRANSFEREE *of* the mortgage *(by* deed INDORSED *or* WRITTEN AT THE END *of* the mortgage*)* (a).

RECONVEYANCE
BY PERSONAL
REPRESENTATIVES.

THIS INDENTURE, made the — day of —, 1882, BETWEEN A. B., of, &c., and C. D., of, &c. (*personal representa-*

(a) It is assumed in this case that the transferee died since the 31st of December, 1881, so that sect. 30 of the Conveyancing Act, 1881, applies.

**RECONVEYANCE
BY PERSONAL
REPRESENTA-
TIVES.**

Recital of
death of trans-
feree and his
will.

Personal re-
presentatives
of transferee
reconvey to
mortgagor.

tives), of the one part, and the within- [*or above*-] named E. F. (*mortgagor*), of the other part: WHEREAS L. M., named in the indenture of transfer dated the — day of —, 18—, indorsed on the within-written indenture [*or* L. M., named in the above-written indenture of transfer dated the — day of —, 18—], died on the — day of —, 1882, having made his will dated the — day of —, and thereby appointed the said A. B. and C. D. executors thereof, who duly proved the same in the principal Probate Registry of the High Court of Justice on the — day of —, 18—: NOW THIS INDENTURE WITNESSETH, that in consideration of all principal money and interest secured by the within- [*or above*-] written indenture of mortgage having been paid and satisfied (the receipt whereof the said A. B. and C. D., as the personal representatives of the said L. M., deceased, hereby acknowledge), the said A. B. and C. D., as such personal representatives as aforesaid, hereby convey unto the said E. F. All the lands and hereditaments comprised in the within- [*or above*-] written indenture of mortgage: To HOLD the same unto and to the use of the said E. F., in fee simple, absolutely discharged from all principal money and interest secured by and from all claims and demands under the said indenture of mortgage.

IN WITNESS, &c.

No. CIII.

**SURRENDER OF
SUB-TERM.**

**SURRENDER of TERM on payment of MORTGAGE DEBT
and INTEREST, where the MORTGAGE is by SUB-DEMISE.**

Parties.

Recite lease of
premises and
mortgage by
leaseholder by
sub-demise.

That mortgage
debt is still
due.

Consideration

The mort-
gagee sur-
renders to
mortgagor to
the intent that

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*mortgagee*), of the one part, and C. D., of, &c. (*mortgagor*), of the other part. (*Recite lease of premises to C. D. for 99 years at a ground-rent of £10,—mortgage by C. D. to A. B. for residue of term of 99 years (wanting 10 days), to secure payment by C. D. to A. B. of £500 and interest*): NOW THIS INDENTURE WITNESSETH, that in consideration of all principal money and interest secured by the said indenture of mortgage having been paid (the receipt whereof the said A. B. hereby acknowledges): the said A. B., as mortgagee, hereby

surrenders unto the said C. D. ALL the premises comprised in the said indenture of mortgage: To THE INTENT that all the residue now unexpired of the said term of 99 years, wanting ten days, may forthwith be merged in the said term of 99 years.

IN WITNESS, &c.

SURRENDER OF
SUB-TERM.

the sub-term
may merge in
the original
term out of
which it was
carved.

No. CIV.

REASSIGNMENT of LEASEHOLDS, *the MORTGAGE of which*
had been TAKEN by ASSIGNMENT on PAYMENT of the
MORTGAGE DEBT.

REASSIGNMENT
OF
LEASEHOLDS.

THIS INDENTURE, made the — day of —, BETWEEN
A. B., cf, &c. (*mortgagee*), of the one part, and C. D., of, &c.
(*mortgagor*), of the other part. (*Recite lease of premises to C. D.*
for — years, at nominal rent,—mortgage of the same premises by
C. D. to A. B. for residue of the said term to secure payment by
C. D. to A. B. of £200 and interest.) NOW THIS INDEN-
TURE WITNESSETH, that in consideration of all principal
money and interest secured by the said indenture of mortgage
having been paid (the receipt whereof the said A. B. hereby
acknowledges), the said A. B., as mortgagee, hereby assigns unto
the said C. D. ALL the premises comprised in the said recited
indenture of mortgage, To HOLD the same unto the said C. D.
for all the residue now unexpired of the said term of — years
therein, absolutely discharged from all principal money and
interest secured by and from all claims and demands under the
said last mentioned indenture.

IN WITNESS, &c.

Parties.

Recite lease
and mortgage
of the lease-
holds by
assignment.

In considera-
tion of all
moneys
secured by the
mortgage
having been
paid,
mortgagee
reassigns
leaseholds to
mortgagor for
residue of the
term,
discharged
from all
moneys
secured by the
said indenture
of mortgage.

No. CV.

RECONVEYANCE and RELEASE of FREEHOLDS and
COPYHOLDS comprised in an INDENTURE of MORTGAGE,
on PAYMENT of DEBTS SECURED by INDENTURES of
MORTGAGE and further charge.

RECONVEYANCE
AND RELEASE
OF FREEHOLDS
AND
COPYHOLDS.

THIS INDENTURE, made the — day of —, BETWEEN
A. B., of, &c. (*mortgagee*), of the one part, and C. D., of, &c.
(*mortgagor*), of the other part. (*Recite mortgage of freeholds and*

Parties.

RECONVEYANCE
AND RELEASE
OF FREEHOLDS
AND
COPYHOLDS.

Recite mort-
gage.
Conditional
surrender of
copyholds.

Further
charge.

That principal
sum is still
due.

Consideration.

Mortgagee
reconveys
freeholds

to mortgagor
in fee.

Release by
mortgagee of

covenant to surrender copyholds, to secure £500 and interest.) AND WHEREAS pursuant to the said covenant in this behalf contained in the said indenture the said C. D. on the — day of — out of court surrendered the said copyhold hereditaments to the use of the said A. B., his heirs and assigns, subject to a condition for making void the surrender on payment by the said C. D. to the said A. B. of the sum of £— with interest for the same after the rate aforesaid on the — day of — then next: AND WHEREAS by an indenture dated, &c., and made between the said C. D. of the one part, and the said A. B. of the other part, in consideration of the sum of £— paid by the said A. B. to the said C. D., the said C. D. declared that all the freehold and copyhold hereditaments comprised in the said indenture of mortgage should stand charged with the payment to the said A. B. of the said sum of £— and interest thereon at the rate of £— per cent. per annum as thereinbefore covenanted to be paid as well as the sum of £— and interest secured by the recited indenture of mortgage: AND WHEREAS the said principal sums of £— and £—, making together the sum of £—, are still due and owing on the security of the said recited indentures, but all interest on account thereof has been paid up to the date of these presents: AND WHEREAS it has been arranged that immediately after the execution of these presents the said A. B. shall execute a warrant to the steward of the said manor to enter up satisfaction of the said conditional surrender as having received from the said C. D. all principal money and interest secured by such surrender (a): NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £— to the said A. B. now paid by the said C. D. in full satisfaction of all principal money and interest secured by the said recited indentures of mortgage and further charge (the receipt whereof the said A. B. hereby acknowledges), the said A. B., as mortgagee, hereby conveys unto the said C. D. ALL the freehold hereditaments and premises comprised in the said recited indentures of mortgage and further charge respectively: To HOLD the same unto and to the use of the said C. D. in fee simple, absolutely discharged from all principal money and interest secured by and from all claims and demands under the said indentures respectively: AND for the consideration aforesaid

(a) For a form of such a warrant, see *supra*, p. 658.

the said A. B. hereby absolutely releases and discharges the said C. D., and also all the copyhold hereditaments and premises comprised in and covenanted to be surrendered by the firstly hereinbefore recited indenture from all such principal money and interest, claims and demands as aforesaid.

IN WITNESS, &c.

RECONVEYANCE
AND RELEASE
OF FREEHOLDS
AND
COPYHOLDS.

copyhold here-
ditaments from
all moneys
secured by the
indentures of
mortgage and
further
charge.

No. CVI.

RECONVEYANCE and SURRENDER of FREEHOLDS and LEASEHOLDS, *which were MORTGAGED in FEE as to the FREEHOLDS, and by SUB-DEMISE as to the LEASEHOLDS, on PAYMENT of the MORTGAGE DEBT and INTEREST (by INDORSEMENT on the MORTGAGE).*

RECONVEYANCE
OF LEASEHOLDS
AND SUB-
RENDER OF
SUB-TERM IN
LEASEHOLDS.

THIS INDENTURE, made the — day of —, BETWEEN the within-named A. B. (*mortgagee*), of the one part, and the within-named C. D. (*mortgagor*), of the other part: WITNESSETH, that in consideration of all principal moneys and interest secured by the within-written indenture having been paid and satisfied (the receipt whereof the said A. B. hereby acknowledges), THE SAID A. B., as mortgagee, hereby conveys unto the said C. D. ALL the freehold hereditaments comprised in the within-written indenture: To HOLD the same unto and to the use of the said C. D. in fee simple, absolutely discharged from all principal money and interest secured by and from all claims and demands under the within-written indenture: AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid the said A. B. hereby surrenders unto the said C. D. ALL AND SINGULAR the leasehold hereditaments and premises comprised in the within-written indenture, absolutely discharged as aforesaid, To THE INTENT that all the residue now unexpired of the within-mentioned term of 99 years, therein wanting the last ten days thereof, may forthwith be merged and extinguished in the said term of 99 years.

Parties.

In considera-
tion of all
moneys
secured by
mortgage
having been
paid,
mortgagee
reconveys
freeholds
to mortgagor,
discharged
from all
moneys
secured by
the indenture
of mortgage.
Mortgagee
surrenders
leaseholds to
mortgagor to
intent that
sub-term may
be merged in
the term out
of which it
was carved,
discharged as
aforesaid.

IN WITNESS, &c.

No. CVII.

RELEASE BY
MORTGAGEE
OF TERM.

RELEASE of LANDS by a MORTGAGEE of a TERM for
RAISING PORTIONS where the MORTGAGE is PAID OFF
out of the PROCEEDS of the sale of PART of the SETTLED
ESTATES (by Indorsement on Mortgage).

Parties.

Recite that
mortgage
money re-
mains due.

Power in
settlement

to sell

and apply
proceeds in
payment of
incumbrances.

That trustees
have in their
hands money
arising from

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*mortgagee*), of the first part, C. D., of, &c. (*trustee of term for raising portions*), of the second part, E. F., of, &c., and G. H., of, &c. (*trustees to exercise power of sale and exchange*), of the third part, and I. K., of, &c. (*tenant for life*), of the fourth part: WHEREAS the sum of £—, secured by the within-written indenture, still remains owing thereon, but all interest for the same up to the date of these presents hath been fully paid, as the said A. B. hereby acknowledges: AND WHEREAS, among other powers created by the within-recited indenture of settlement of the — day of —, it was thereby provided that it should be lawful for the said E. F. and G. H., or the survivor of them, or the executors or administrators of such survivor (by such direction as therein mentioned), to make sale and dispose of all or any of the manors and hereditaments thereby settled in manner therein expressed: and that they, or the survivor of them, or the executors or administrators of such survivor, should, at the request and by the direction of the person who for the time being would be entitled to the rents of the hereditaments thereafter directed to be purchased, invest the moneys to arise by such sale or sales, in the purchase of other hereditaments to be settled to the uses thereby limited concerning the hereditaments which should have been so sold, but with power for the said E. F. and G. H., and the survivor of them, and the executors or administrators of such survivor, to apply any of such sale moneys in or towards payment and discharge of all or any of the gross sums then already charged, or which should thereafter by virtue of the powers thereinbefore contained be charged upon all or any of the hereditaments thereinbefore settled: AND WHEREAS there is now in the hands, or standing to the account of the said E. F. and G. H., as the trustees of the power of sale contained in the said inden-

ture of the — day of —, a considerable amount of money which has arisen by the sale of certain parts of the said estates thereby settled, and which moneys are liable, by virtue of the same settlement, either to be laid out in the purchase of other hereditaments, or to be applied in discharge of any gross sums charged upon the same settled estates, or any part thereof:

RELEASE BY
MORTGAGEE
OF TERM.
sale of part of
estates.

AND WHEREAS the said A. B. is willing to receive the said principal sum of £— remaining due to him by virtue of the within-written indenture, and it has been agreed by and amongst the said other parties hereto, that the same shall be paid off by the said E. F. and G. H. out of the trust moneys in their hands produced by such sale of settled estates as aforesaid, to the intent that such debt or charge of £— and interest may be wholly extinguished for the benefit of those entitled or to become entitled to the estates subject thereto, in manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £— (being part of the moneys produced by such sale of settled estates as aforesaid) by the said E. F. and G. H., as such trustees as aforesaid, paid to the said A. B., at the request and by the direction of the said parties hereto of the second and fourth parts, and the receipt of which said sum of £—, in full discharge of all moneys remaining due for principal or interest, or otherwise upon or by virtue of the within-written indenture, the said A. B. hereby acknowledges, the said A. B., at such request and by such direction as aforesaid, hereby releases and discharges ALL the manors, messuages, lands, tenements, and hereditaments comprised in the within-written indenture, of and from the said sum of £—, secured by the same indenture, and all interest for the same, and all claims and demands on account thereof: To THE INTENT that the within-mentioned term of 500 years, and all other (if any) such term, estate, and interest as are vested in the said A. B., by virtue of the within-written indenture, for securing the repayment of the said sum of £—, and the interest thereof, may from henceforth cease and determine.

Agreement
that mortgage
shall be paid
off out of pro-
ceeds of sales.

In considera-
tion of mort-
gage money
being paid
out of said
proceeds,

mortgages
releases settled
estates from
mortgage
debt.

IN WITNESS, &c.

No. CVIII.

RECEIPT
INDORSED ON
BUILDING
SOCIETY MORT-
GAGE.

RECEIPT *to be indorsed on or annexed to a MORTGAGE to a BUILDING SOCIETY on payment of the MONEYS secured thereby (a).*

THE ——— Building Society hereby acknowledges to have received all moneys intended to be secured by the within (or above) written deed. IN WITNESS whereof the seal of the said society is hereto affixed this — day of —, by order of the Board of Directors (or Committee of Management) in presence of,

A. B., Secretary [or Manager].

[Other witnesses if any required by the rules of the Society].

Provision of
Act as to in-
dorsement on
mortgage, of
reconveyance
or receipt.

(a) By the Building Societies Act, 1874 (37 & 38 Vict. c. 42), s. 42, it is provided, that when all moneys intended to be secured by any mortgage or further charge given to a society under the Act have been fully paid or discharged, the society may indorse upon or annex to such mortgage or further charge a reconveyance of the mortgaged property to the then owner of the equity of redemption, or to such persons and to such uses as he may direct, or a receipt under the seal of the society, countersigned by the secretary or manager in the form specified in the schedule to the Act, and such receipt shall vacate the mortgage, or further charge, or debt, and vest the estate of and in the property therein comprised in the person for the time being entitled to the equity of redemption, without any reconveyance or resurrender.

Operation and
effect of in-
dorsement
of receipt.

The effect of the indorsement above mentioned is to vest the legal estate in the party or parties who may have the best right to call for it. For instance, where there is a mortgage to a building society, and after that there are successive equitable mortgages of the same property, and the society is paid off by the mortgagor, the effect of the indorsement is to vest the legal estate in the equitable mortgagee who is first in point of time, unless the society is paid off by a subsequent equitable mortgagee who had no notice of the prior incumbrance, in which case the legal estate would vest in that mortgagee. (Fourth City M. B. B. Society v. Williams, 14 Ch. D. 140.) In another case A., having the legal as well as equitable estate in leaseholds, executed a mortgage of them to a building society, afterwards he mortgaged them to B., and then he executed a third mortgage of the same property to C., who advanced a large sum without notice of the second mortgage. A part of the last-mentioned loan was applied in payment of the moneys due to the building society, and the remainder was paid directly to the mortgagor. On the payment of the building society's debt, the society indorsed a receipt on the first mortgage deed in compliance with the Act, and it was held that C. had priority over the second mortgagee, not only in respect of the money paid to the building society, but also in respect of the balance which was paid directly to the mortgagor. (Hosking v. Smith, 13 Ap. Cas. 582. See also Carlisle Banking Co. v. Thompson, 28 Ch. D. 396.)

No. CIX.

RECEIPT *to be indorsed on or annexed to a MORTGAGE to a FRIENDLY SOCIETY on payment of the MONEYS secured thereby (a).*

RECEIPT
INDORSED ON
MORTGAGE TO
FRIENDLY
SOCIETY.

THE trustees of the — society hereby acknowledge to have received all moneys intended to be secured by the within [or above] written deed.

Signed (*Signature of trustees*).

Countersigned (*Signature of secretary*).

—, Secretary.

No. CX.

CHARGE *by a REGISTERED PROPRIETOR under the "LAND TRANSFER ACT, 1875" (b).*

CHARGE BY
REGISTERED
PROPRIETOR.

Land Transfer Act, 1875.

Office of Land Registry.

Instrument of Charge.

No. of title charged.

18 . In consideration of [*four thousand pounds*], I, A. B., of, &c., hereby charge all the land comprised in the title above referred to with the payment to C. D., of, &c., on the — day of —, 18—, of the principal sum of [£4,000], with interest at £— per cent. per annum, and with a power of sale to be exercised after the — day of —, 18—, subject to the stipulations contained in the schedule hereto.

SCHEDULE.

(*Such of the following provisions will be inserted as are agreed on.*)

A. *Incorporation of provisions of Conveyancing Act, 1881.*—The registered proprietor for the time being of the charge shall have the like

(a) See Friendly Societies Act, 1875 (38 & 39 Vict. c. 60), s. 16, sub-s. (7).

(b) This is the form prescribed by the New Rules dated the 1st January, 1889. The signature of the proprietor will have to be verified, as prescribed by Rule 5, and a form of verification is given.

CHARGE BY
REGISTERED
PROPRIETOR.

powers as are conferred on a mortgagee by the Conveyancing Act, 1881, s. 19, sub-s. 1, in cases where the mortgage is made by deed, and the power of sale contained in the charge shall take effect accordingly.

The following sections of the same Act shall also apply :—

Sect. 20.

Sect. 21, sub-sect. 2, as though the transfer on a sale made by the proprietor of the charge was made by a conveyance in professed exercise of the power of sale conferred by the said Act.

Sect. 22, sub-sect. 1.

Sect. 23.

B. *Reduction of interest on punctual payment.*—The interest secured by the charge shall be reduced to — per cent. in every half year in which it is paid within twenty-one days of its falling due.

C. *Principal not to be called in.*—None of the principal secured by the charge shall be called in till the — of —, 18—, unless the interest shall fail to be paid within twenty-one days of its falling due.

D. *Principal not to be paid off.*—None of the principal secured by the charge shall be paid off till the — of —, 18—, unless the proprietor of the charge shall be willing to accept it.

E. *Payments by instalments.*—If the interest secured by the charge shall be paid within twenty-one days of its falling due, the principal secured by the charge shall be payable by instalments of £— each, to be paid on the — of — and the — of — in every year, the first of such instalments to be paid on the — of —, 18—. Provided that on failure of payment of any instalment within twenty-one days of its becoming payable, the whole of the principal remaining owing on the said security shall become payable at once.

F. *Debtor's liberty to pay off notwithstanding.*—Provided nevertheless that the whole or any part (not less than £— at any one time) of the above-mentioned principal may be paid off on giving one calendar month's notice in writing of the intention to do so, and on paying up all arrears of interest that may be due at the time of such payment of principal.

G. *Entry negating implied covenant to pay.*—No covenant to pay principal or interest is implied in the charge.

No. CXI.

TRANSFER
OF CHARGE BY
REGISTERED
PROPRIETOR.

TRANSFER of CHARGE by a REGISTERED PROPRIETOR (a).

Land Transfer Act, 1875.

Office of Land Registry.

Transfer of Charge

I, C. D., the registered proprietor of the charge dated the — day of —, 18—, on the land registered in the name of A. B., under the above number, in consideration of [*four thousand pounds*] paid to me, transfer such charge to E. F., of, &c., as proprietor.

[*Signature of registered proprietor.*]

Witness.

(a) This is the form prescribed by the Rules of 1875. The Rules of 1889 prescribe no form of transfer of charge.

No. CXII.

AGREEMENT (a) *between MORTGAGOR and two MORTGAGEES of different properties as to DOCUMENTS relating to both properties and which have been delivered to one of the MORTGAGEES. ACKNOWLEDGMENT of the right of the other MORTGAGEE to production, and AGREEMENT that DOCUMENTS shall be delivered to him if his mortgage is subsisting when the other is paid off (b).*

AGREEMENT AS
TO DOCUMENTS.

MEMORANDUM OF AGREEMENT made the — day of —, 18—, BETWEEN A. B., of, &c. (*mortgagor*), of the first part, C. D. of, &c. (*one mortgagee*), of the second part, and E. F. of, &c. (*other mortgagee*), of the third part: WHEREAS by an indenture bearing even date herewith, and made, &c. (*parties*), certain lands and hereditaments situate, &c., therein described, have been conveyed by the said A. B. unto and to the use of the said C. D. in fee simple by way of mortgage to secure £— and interest (*similar recital of mortgage to E. F.*): AND WHEREAS the documents specified in the schedule hereto relate to the hereditaments comprised in both the said indentures of mortgage, and the same have been delivered to the said C. D. subject to the arrangement hereinafter expressed: NOW the said C. D. hereby acknowledges the right of the said E. F. to production of the documents specified in the schedule hereto, and to delivery of copies thereof: AND IT IS HEREBY AGREED that if the first hereinbefore recited mortgage shall be paid off and satisfied while any money remains owing to the said E. F., his executors, administrators, or assigns, on the secondly hereinbefore recited mortgage, then and in such case the said documents shall be delivered to him or them.

AS WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

- (a) This will require an agreement stamp.
(b) If two different properties held under the same title are mortgaged at the same time to two different mortgagees, it is necessary to make some arrangement about the custody of the title deeds. They may either be delivered to one mortgagee, he giving to the other an acknowledgment of the right to production, as is done in the above precedent, or they may be delivered to a firm of solicitors acting for both mortgagees or sets of mortgagees, and this is the plan adopted in the next precedent.

What arrangement should be made as to documents when two properties held under the same title are mortgaged to different persons.

No. CXIII.

**MEMORANDUM
AS TO
DOCUMENTS.**

MEMORANDUM *that Documents are held by Solicitors on behalf of two sets of Mortgagees of different Properties.*

That documents relate to two properties mortgaged to different persons, and are in possession of solicitors on behalf of both sets of mortgagees.

MEMORANDUM: That the documents specified in the schedule hereto relate—(1) to certain lands and hereditaments situate in, &c., belonging to A. B., of, &c. (*mortgagor*), and by him mortgaged to C. D., of, &c., and E. F., of, &c. (*mortgagees*), by an indenture bearing even date with these presents to secure £—— and interest, and (2) to certain other lands and hereditaments situate in, &c., belonging to the said A. B., and by him mortgaged to G. H., of, &c., and I. K., of, &c. (*other mortgagees*), by another indenture bearing even date herewith to secure £—— and interest, and that the same are now in the possession of the undersigned, Messrs. —— & ——, as solicitors for and on behalf of the said C. D. and E. F., and also for and on behalf of the said G. H. and I. K., as such mortgagees respectively as aforesaid.

Dated the —— day of ——, 18—.

THE SCHEDULE ABOVE REFERRED TO.

(Signed) —— & ——, (*Solicitors*).

No. CXIV.

**NOTICE BY
SECOND MORT-
GAGEE TO
FIRST MORT-
GAGEE.**

NOTICE *by SECOND MORTGAGEE to a FIRST MORTGAGEE.*

To C. D. (*first mortgagee*).

WE HEREBY GIVE YOU NOTICE, that by an indenture dated, &c., and made, &c. (*date and parties*), the lands and hereditaments situate in the parish of ——, in the county of ——, in mortgage to you from the said A. B. (*mortgagor*), have been conveyed by him to the said E. F. (*second mortgagee*) by way of mortgage to secure £—— and interest.

Dated the —— day of ——, 18—.

(Signed)

Solicitors for the above-named E. F.

No. CXV.

NOTICE *by* MORTGAGEES *of* REVERSIONARY INTEREST *in*
settled PERSONAL ESTATE *to* TRUSTEES *of* Fund.

BY MORT-
GAGEES OF
REVERSIONARY
INTEREST IN
PERSONALTY
TO TRUSTEES
OF FUND.

To L. M. and N. O., the trustees of an indenture dated the
— day of —, 18—, being a settlement made on the mar-
riage of — [or, the trustees of the will of —, deceased].

WE HEREBY GIVE YOU NOTICE, that by an indenture dated, &c.,
and made, &c. (*date and parties*), the reversionary share of the
said A. B. (*mortgagor*) in the trust funds comprised in the said
indenture of settlement [or, in the trust moneys and funds
representing the residuary estate of the said —, or in, &c.
(*following the language of the mortgage deed*)], was assigned by
him to the said C. D. (*mortgagee*), subject to redemption as
therein mentioned [or, was charged with the payment to the
said C. D. of the moneys therein mentioned, or, &c. (*according*
to the terms of the deed)].

Dated the — day of —, 18—.

(Signed)

Solicitors for the above-named C. D.

No. CXVI.

NOTICE *by* MORTGAGEE *to* TENANT *not to pay rent to*
MORTGAGOR.

BY MORTGAGEE
TO TENANT.

I HEREBY give you notice that, by an indenture dated the —
day of —, and made between A. B., of, &c., of the one part,
and me of the other part, the messuage and piece of ground
situate at —, and now in your possession were conveyed to
me, my heirs and assigns, by the said A. B. by way of mortgage
for securing the principal sum of £— and interest thereon

**BY MORTGAGEE
TO TENANT.**

after the rate therein mentioned, and that under the said indenture the said principal sum is still due and owing, together with an arrear of interest thereon, and I therefore require you to pay to me the rent now and hereafter to accrue due in respect of the said premises, and on no account after the date hereof to pay any rent in respect of the said premises to the said A. B. or to any person or persons other than myself.

As witness my hand the — day of —.

To C. D. (*tenant*).

A. B. (*mortgagee*).

No. CXVII.

**BY MORTGAGOR
TO PAY OFF.**

NOTICE *by MORTGAGOR to pay off at the expiration of*
SIX MONTHS.

I HEREBY give you notice that, at the expiration of six calendar months from the date hereof, I shall pay unto you, your executors, administrators, or assigns, the principal moneys and interest due and owing to you from me, on the security of a certain indenture dated the — day of —, and made between me of the one part, and you of the other part.

As witness my hand this — day of —.

To C. D. (*mortgagee*).

A. B. (*mortgagor*).

No. CXVIII.

**BY MORTGAGEE
OF INTENTION
TO SELL.**

NOTICE *by MORTGAGEE to MORTGAGOR requiring PAY-*
MENT, with a view to exercise POWER of SALE in case of
DEFAULT.

I HEREBY require you to pay to me, at the expiration of six calendar months from the date of this notice, the principal sum

of £—— secured by a certain indenture dated the —— day of ——, and made between you of the one part, and me of the other part, and all interest then due thereon, and I hereby give you notice that if you make default in such payment, I shall proceed to sell the hereditaments and premises comprised in the said indenture in pursuance and exercise of the power for that purpose given to me by the said indenture.

BY MORTGAGEE
OF INTENTION
TO SELL.

As WITNESS my hand this —— day of ——.

To C. D. (*mortgagor*).

A. B. (*mortgagee*).

No. CXIX.

NOTICE *by MORTGAGEE of intention to exercise POWER of SALE, to be left on the property, it not being known where the MORTGAGOR is.*

BY MORTGAGEE
OF INTENTION
TO SELL.

To C. D. (*mortgagor*), if living, or his legal personal representative, and all other persons whom this notice may concern.

I hereby require the payment to me of the principal sum of £—— secured by an indenture dated, &c., and made, &c. (*state date and parties*), and all interest due thereon, And I give notice that if the same is not paid to me within six calendar months after the date of this notice I shall proceed to sell the hereditaments comprised in the said indenture in pursuance and exercise of the power for that purpose given to me by the said indenture.

As WITNESS my hand this —— day of ——, 18—.

A. B. (*mortgagee*).

BILLS OF SALE.

Division of
subject.

It is proposed in this Dissertation to consider :—
 I. The modes of transfer of personal chattels. II. The provisions of the Bills of Sale Acts. III. In what cases a gift or sale of personal chattels is liable to be avoided by creditors under the statute 13 Eliz. c. 5, or the trustee of a bankrupt can dispose of chattels in his possession as reputed owner under the order and disposition clause in the "Bankruptcy Act, 1883." IV. In what cases a bill of sale is an act of bankruptcy or is otherwise void under the bankruptcy law. V. The proper mode of framing a bill of sale by way of mortgage, and the operation of bills of sale of after-acquired chattels.

I. The modes of transfer of personal chattels.

Modes of
transfer of
personal
chattels.

Parol gift of
chattels void.

Delivery :
what is
sufficient.

The property in personal chattels may be transferred, by actual delivery, by deed, or by a contract for sale.

A *gift* of chattels must be by delivery or deed. A parol gift without delivery is void (*a*).

Where actual delivery of the articles which are the subject of the gift is impossible or inconvenient, a delivery of some symbol of possession will be sufficient, as where the goods are in a warehouse, a delivery of the key (*b*). The marking of the goods by the purchaser has been also held to be a delivery and taking possession (*c*).

(*a*) *Irons v. Smallpiece*, 2 B. & Ald. 551; *Showers v. Pilch*, 4 Exch. 478; 19 L. J. (Ex.) 113.

(*b*) *Ryall v. Rowles*, 1 Ves. Senr. 366.

(*c*) *Ellis v. Hunt*, 3 T. R. 464; *Stoveld v. Hughes*, 14 East, 308.

A deed or other instrument transferring the property in chattels, is usually called a bill of sale. Bills of sale are either absolute, entitling the grantee to immediate possession; or conditional, entitling him to take possession on the performance or non-performance of some condition, *e.g.*, a mortgage where the mortgagor is entitled to retain possession until default.

Bill of sale.
Absolute or
conditional.

A contract for the sale of goods, if of the value of 10*l.* or upwards, must, under the Statute of Frauds, be accompanied by acceptance of part of the goods or payment of part of the money as earnest money by the purchaser, *or*, there must be a memorandum in writing signed by the parties to be charged, or their agents, and if the contract is not to be performed within a year, a memorandum in writing is necessary, however small may be the value of the goods. Subject to this condition the contract passes the property in the goods at law, and the vendor is bound on payment of the full price to deliver them over to the vendee.

Contract for
sale, requisites
of, under
Statute of
Frauds.

An agreement, letter, or memorandum, for or relating to the sale of goods, wares, or merchandise, is exempted from stamp duty (*d*), and it is apprehended that this exemption extends to an instrument purporting to be a present assignment of this description of property (*e*).

No stamp duty
on sale.

Fixtures, *i.e.*, chattels affixed to the land or to a building, are, when so affixed, part of the land, and pass by an assurance of the land itself without being expressly mentioned, and this is so whether the assurance be absolute or by way of mortgage, legal or equitable (including a deposit of deeds), and whether the person making the assurance, or the depositor, be absolute owner of the land and fixtures, or a lessee of the land who has put up the fixtures and has a right to remove them as against his landlord (*f*). But a lessee or

Fixtures.

(*d*) 33 & 34 Vict. c. 97, sch. "Agreement."

(*e*) See *Horsfall v. Key*, 17 L. J. Ex. 266.

(*f*) *Colgrave v. Dios Santos*, 2 B. & C. 76; *Longstaff v. Meagoe*, 2 Ad. & El. 167; *Ex parte Cotton*, 2 M. D.

& De G. 725; *Clinie v. Wood*, L. R. 3 Ex. 328; *Ex parte Astbury*, L. R. 4 Ch. 630; *Ex parte Broadwood*, 1 M. D. & De G. 621; *Ex parte Price and another*, 2 M. D. & De G. 58; *Meux v. Jacobs*, L. R. 7 H. L. 481.

tenant having put up fixtures which he has a right to remove, may assign them by deed or writing separately from his interest in the land. Such an assignment operates as a transfer of the right of severance, and a licence to the assignee to enter upon the land for the purpose of exercising such right (*g*).

Right to fixtures as between landlord and tenant.

(*g*) *Thomson v. Pettit*, 16 L. J. Q. B. 162; *Horsfall v. Key*, 17 L. J. Ex. 266.

The rule with reference to fixtures as between landlord and tenant is that everything which the latter affixes for the better enjoyment of the property during the term, whether the annexation is made for the purpose of trade, or for domestic convenience or ornament, may be removed by him during the term, provided the removal can be made without material injury to the freehold, and provided the fixture is not a substantial addition to the house, similar to the conservatory erected by the tenant in *Buckland v. Butterfield*, 2 Brod. & Bing. 54, or a building with foundations let into the soil, as in the case of *Whitehead v. Bennett*, 27 L. J. Ch. 474; see also *Thresher v. East London Waterworks Company*, 2 B. & C. 608. Accordingly, it has been held that vats, colliery engines, looms fastened to the floor, and other fixed machinery, wooden cornices, chimney-pieces, fixed wainscot, hangings, pier-glasses, grates, stoves, cooling coppers, blinds, a fixed pump, &c., are removable by the tenant. (*Poole's Case*, 1 Salk. 368; *Lawton v. Lawton*, 3 Atk. 13; *Dean v. Allalley*, 3 Esp. N. P. C. 11; *Foley v. Addenbroke*, 13 M. & W. 174; *Avery v. Cheslyn*, 3 Ad. & El. 75; *Boyd v. Shorrocks*, L. R. 5 Eq. 72; *Grymes v. Boweren*, 6 Bing. 437; *Queen v. Lee*, L. R. 1 Q. B. 251; *Amos & Ferrard's Fixtures*, p. 40, 3rd ed., and also p. 73 in the same work as to the right of removal of things set up for agricultural purposes.)

Whether tenant may remove greenhouses.

It appears that an ordinary tenant would not be entitled to remove a greenhouse erected by him

which is fixed with mortar to foundation walls of brickwork, or such a thing as a boiler built into the masonry of the building; but that greenhouses, forcing pits, and hot-bed frames erected by nursery gardeners for the purposes of their trade, may be removed so far as they do not consist of brickwork. (*Jenkins v. Getting*, 2 J. & H. 520.) Buildings erected by a rector during his incumbency may be removed by him or his representatives, when if he had been only an ordinary tenant they would have been irremovable. Thus, when a rector built in his garden two hot-houses, consisting of a frame and glass-work resting on brick walls, it was held that his executors were entitled to remove them without incurring any liability for dilapidation or waste. (*Martin v. Roe*, 7 El. & Bl. 237.)

*Questions often arise as to what are to be deemed fixtures as between the heir and executor of a deceased owner. The principle is this:—If machinery or any more or less important article is affixed by the owner, though it be only slightly affixed, as by bolts, nuts, or screws, it is to be considered as part of the land, if the object is to increase the value or beneficial enjoyment of the premises, whether the purpose he has in view is profit or domestic convenience or ornament. By way of illustration, the engines which the owner affixed, as in the case of *Fisher v. Dixon*, 12 Cl. & Fin. 312, the steam-engine and boilers, mill-gear, &c., erected, as in the case of *Mather v. Fraser*, 2 K. & J. 536, the threshing-machine attached to the barn to improve its usefulness as a barn, as in the case of *Wiltshire v. Cotterell*, 1 E. & B. 674, the hay-cutter attached to the stable as an

II. *The provisions of the Bills of Sale Acts.*

The possession of chattels carries with it a presumption of ownership which does not arise in relation to a house or land, the occupier of which is as often a tenant as absolute proprietor, and the claim of creditors to some protection against secret alienation of their debtors' goods has from time to time been recognized by the legislature and courts of law. Up to 1854 this protection depended mainly on the Act 13 Eliz. c. 5, and, as regards traders, on the Bankruptcy laws.

Possession of chattels carries presumption of ownership.

In 1854 the first Act was passed, providing for the registration of bills of sale. This, and a supplemental Act passed in 1866, whereby registration was required to be renewed every five years, were repealed, except as regards instruments made before the 1st January, 1879, by the Bills of Sale Act, 1878(*h*). This Act has been amended and partially repealed by the Bills of Sale Act (1878) Amendment Act, 1882(*i*), which contains provisions having for their object not only the protection of the creditors of the grantor from fraudulent dispositions by him, but also the protection of the grantor himself from the oppressive action of money lenders.

First Bills of Sale Act in 1854. Supplemental Act in 1866, followed by Act of 1878, which has been amended by Act of 1882.

The provisions of the Acts of 1878 and 1882, taken together, are in effect as follows:—

1. The Act of 1878 applies to every bill of sale executed on or after the 1st January, 1879 (whether absolute or subject or not subject to any trust), whereby the holder or grantee has power, either with or without notice, and either immediately or at any future time, to

To what Bills of Sale Act of 1878 applies.

adjunct and to improve its usefulness as a stable, as in *Walmisley v. Milne*, 29 L. J. C. P. 97, and the looms attached to the floors of the mill, as in *Holland v. Hodgson*, L. R. 7 C. P. Ex. Ch. 328, were held to be annexations to improve the inheritance. (See also *Queen v. Lee*, L. R. 1 Q. B. 251; *Longbottom v. Berry*, L. R. 5 Q. B. 123; *The Sheffield and South Yorkshire Permanent Benefit Building Society v.*

Harrison, 15 Q. B. D. 358.)

As to what are not fixtures, see *Davis v. Jones*, 2 Bar. & Ald. 165; *Wansbrough v. Maton*, 4 A. & E. 884; *Wood v. Hewitt*, 14 L. J. Q. B. 247; *Penton v. Robart*, 2 East, 90; *Culling v. Tuffnal*, Bul. N. P. 34; *Holland v. Hodgson*, *ubi supra*; *R. v. Otley*, 1 B. & Ad. 161; *Ex parte Astbury*, L. R. 4 Ch. 630.

What are not fixtures.

(*h*) 41 & 42 Vict. c. 31.

(*i*) 45 & 46 Vict. c. 43.

seize or take possession of any personal chattels comprised in or made subject to such bill of sale (*k*).

To what Bills of Sale Act of 1882 applies.

2. The Act of 1882 applies to bills of sale given on or after the 1st November, 1882, by way of security for the payment of money, and also to bills of sale given for that purpose within seven days before the 1st November, 1882, if they were not registered at that date (*l*), but not to bills of sale executed more than seven days before that date (*m*).

Bills of sale under Act of 1878 must be (1) attested by solicitor, (2) registered within seven days, and (3) state consideration ;

3. Every bill of sale to which the Act of 1878 applies, and the Act of 1882 does not apply, must observe the following conditions, namely :—(1) Its execution must be attested by a solicitor of the Supreme Court, and the attestation must state that before its execution the effect thereof was explained to the grantor by the attesting solicitor (*n*); (2) It must be registered within seven days from the making or giving thereof (*o*); and (3) It must set forth the consideration for which it was given (*o*). If the above conditions have not been observed, the bill of sale is void as against all trustees of the estate of the grantor in bankruptcy or liquidation, or under any assignment for the benefit of creditors, and against execution creditors, so far as regards the property in or right to the possession of any chattels comprised in such bill of sale, which at or after the filing of the bankruptcy or liquidation petition, or the execution of the assignment, or the execution of process, and after the expiration of such seven days (*p*), are in the possession or apparent possession of the grantor (*q*). And personal chattels will be deemed to be in the apparent possession of the grantor so long

or otherwise are void against trustee in bankruptcy, &c.

(*k*) Sect. 3.

(*l*) Sect. 3.

(*m*) *Hickson v. Darlow*, 23 Ch. D. 690.

Construction of clause as to attestation by a solicitor.

(*n*) Sect. 10. Attestation by a solicitor is not necessary as between grantor and grantee. (*Davis v. Goodman*, 5 C. P. D. 128.) If the attestation clause states that the effect of the bill of sale has been explained by the solicitor, this is sufficient, although he may not in fact have done so. (*Ex parte Mer-*

cantile Bank, 15 Ch. D. 42.) Nor need the affidavit state that such explanation was given. (*Ex parte Belland*, 21 Ch. D. 543.)

(*o*) Sect. 8.

(*p*) If the sheriff takes goods in execution before the expiration of the seven days, the grantee may set up the bill of sale, though unregistered. (See *Marples v. Hartley*, 7 Jur. N. S. 446; 30 L. J. Q. B. 92.)

(*q*) Act of 1878, s. 8.

as they remain or are in or upon any premises occupied by him, or are used and enjoyed by him in any place whatsoever, notwithstanding that formal possession may have been taken by or given to any other person (*r*).

4. Every bill of sale to which the Act of 1882 applies must observe the following conditions, namely:—

(1) It must be attested by one or more credible witness or witnesses, not being a party or parties thereto (*s*); (2) It must be registered within seven clear days after its execution, or if it is executed in any place out of England, then within seven clear days after the time at which it would in the ordinary course of post arrive in England, if posted immediately after the execution thereof (*t*); (3) It must truly set forth the consideration (*t*); (4) It must be made in accordance with the form in the schedule to the Act of 1882 (*u*); (5) It must be made or given in consideration of a sum not less than thirty pounds (*v*). If the above conditions are not observed, the bill of sale is absolutely void, even against the grantor.

Bill of sale under Act of 1882 void against every one, unless (1) attested, (2) registered within seven days, and (3) consideration truly stated, (4) made in accordance with form in schedule, and (5) consideration £30 at least.

5. The expression "bill of sale" as used in the Act of 1878, includes bills of sale, assignments, transfers, declarations of trust without transfer, inventories of goods with receipt thereto attached (*x*), or receipts for purchase-moneys of goods (*y*), and other assurances of personal chattels, and also powers of attorney, authorities, or licenses to take possession of personal chattels as security for any debt, and also any agreement, whether intended or not to be followed by the execution of any other instrument, by which a right in equity to any personal chattels, or to any charge or

Definition of expression "bill of sale" in Act of 1878.

(*r*) Sect. 14. Several cases have been decided as to the meaning of "apparent possession," but they are of small practical importance having regard to the Act of 1882.

(*s*) Act of 1882, s. 10. It need not be attested by a solicitor, sect. 10 of the Act of 1878 being repealed.

(*t*) Sect. 8.

(*u*) Sect. 9. As to what is in ac-

cordance with the form, see pp. 716—718, *infra*.

(*v*) Sect. 12. See *Davis v. Usher*, 12 Q. B. D. 492.

(*x*) See *Marden v. Marden*, 7 Q. B. D. 80.

(*y*) Under the Act of 1854 a receipt for the purchase-money of goods was held not to be a bill of sale. (*Byerley v. Prevost*, L. R. 6 C. P. 144.)

security thereon, is conferred, but does not include the following documents; that is to say, assignments for the benefit of the creditors of the person making or giving the same, marriage settlements, transfers or assignments of any ship or vessel, or any share thereof, transfers of goods in the ordinary course of business of any trade or calling, bills of sale of goods in foreign parts or at sea, bills of lading, India warrants, warehouse keepers' certificates, warrants or orders for the delivery of goods, or any other documents used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by indorsement or by delivery, the possessor of such document to transfer or receive goods thereby represented (z).

Meaning of
expression
"bill of sale"
in Act of 1882.

6. The expression "bill of sale," as used in the Act of 1882, has the same meaning as in the Act of 1878, except that it does not include documents given otherwise than by way of security for the payment of money.

Meaning of
expression
"personal
chattels" in
Acts of 1878
and 1882.

7. The expression "personal chattels," as used in both Acts, means goods, furniture, and other articles capable of complete transfer by delivery, and (when separately assigned or charged) fixtures and growing crops, but does not include chattel interests in real estate, nor fixtures (except trade machinery as herein-after defined), when assigned together with a freehold or leasehold interest in any land or building to which they are affixed, nor growing crops when assigned together with any interest in the land on which they grow, nor shares or interests in the stock, funds, or securities of any government, or in the capital or property of incorporated or joint-stock companies, nor choses in action, nor any stock or produce upon any farm or lands which by virtue of any covenant or agreement or of the custom of the country ought not to be removed from any farm where the same are at the time of making or giving of such bill of sale (z).

Trade
machinery.

8. Trade machinery comes within the term "per-

sonal chattels" for the purposes of the Acts. "Trade machinery" means the machinery used in or attached to any factory or workshop, exclusive of (1), The fixed motive powers, such as the water-wheels and steam engines, and the steam-boilers, donkey engines, and other fixed appurtenances of the said motive powers; (2), The fixed power machinery, such as the shafts, wheels, drums, and their fixed appurtenances, which transmit the action of the motive powers to the other machinery fixed and loose; (3), The pipes for steam, gas, and water in the factory or workshop. The machinery or effects above excluded from the definition of trade machinery are not personal chattels within the meaning of the Acts, and an assignment of them does not require registration (*a*). "Factory or workshop" means any premises on which any manual labour is exercised by way of trade, or for purposes of gain, in or incidental to the following purposes or any of them; that is to say, (1), In or incidental to the making any article or part of an article; or (2), In or incidental to the altering, repairing, ornamenting, finishing, of any article; or (3), In or incidental to the adapting for sale any article (*b*).

9. Every attornment, instrument, or agreement, not being a mining lease, whereby a power of distress is given or agreed to be given by any person to any other person by way of security for any present, future, or contingent debt or advance, and whereby any rent is reserved or made payable as a mode of providing for the payment of interest on such debt or advance, or otherwise for the purpose of such security only, is a bill of sale, within the meaning of both Acts, of any personal chattels which may be seized or taken under such power of distress. But this does not extend to any mortgage of any estate or interest in any land, tenement, or hereditament which the mortgagee, being in possession, shall have demised to the mortgagor as his tenant at a fair and reasonable rent (*c*).

Certain instruments giving powers of distress to be deemed bills of sale.

(*a*) *Topham v. Greenside, &c. Co.*,
37 C. D. 281.

(*b*) Sect. 5.

(*c*) Sect. 6. It has been decided

Fixtures or growing crops not to be deemed separately assigned when the land passes by the same instrument.

10. No fixtures or growing crops will be deemed, under either Act, to be separately assigned or charged by reason only that they are assigned by separate words, or that power is given to sever them from the land or building to which they are affixed, or from the land on which they grow, without otherwise taking possession of or dealing with such land or building, or land, if by the same instrument any freehold or leasehold interest in the land or building to which such fixtures are affixed, or in the land on which such crops grow, is also conveyed or assigned to the same persons or person (*d*). And this rule of construction applies to all deeds or instruments including fixtures or growing crops, executed before the 1st January, 1879, and then subsisting and in force, in all questions arising under any bankruptcy, liquidation, assignment for the benefit of creditors, or execution of any process of any court, which takes place or is issued after that date.

11. Where a subsequent bill of sale is executed within or on the expiration of seven days after the execution of a prior unregistered bill of sale, and comprises all or any part of the personal chattels comprised in such prior bill of sale, then, if such subsequent bill of sale is given as a security for the same debt as is secured by the prior bill of sale, or for any part of such debt, it is absolutely void to the extent to which it is a security for the same debt or part thereof, and so far as respects the personal chattels or part thereof comprised in the prior bill, unless it is proved to the satisfaction of the Court having cognizance of the case that the subsequent bill of sale was *bonâ fide* given for the purpose of correcting some material error in the prior bill of sale, and not for the purpose of evading the Act (*e*).

that the proviso does not apply to a case where the attornment clause is inserted in the mortgage itself, but only to one where a mortgagee takes possession after the mortgage and then demises to the mortgagor. (*Re Willis*, 21 Q. B. D. 384.)

(*d*) Sect. 7 of Act of 1878.

(*e*) Act of 1878, s. 9. This clause was intended to meet a device which under the Act of 1854 was sometimes adopted of repeatedly renewing the bill before the expiration of the period allowed for registration, so as

12. The mode of registering bills of sale is as follows, namely: (1), The bill, with every schedule or inventory thereto annexed or therein referred to, and also a true copy of such bill and of every such schedule or inventory, and of every attestation of the execution of such bill of sale, together with an affidavit of the time of such bill of sale being made or given, and of its due execution and attestation, and a description of the residence and occupation of the person making or giving the same, and of every attesting witness to such bill of sale, must be presented to, and the said copy and affidavit must be filed with the registrar within seven clear days after the making or giving of the bill of sale, in like manner as a warrant of attorney in any personal action given by a trader is by law required to be filed; (2), If the bill of sale is made or given subject to any defeasance or condition, or declaration of trust^(f) not contained in the body thereof, such defeasance, condition, or declaration is to be deemed part of the bill, and must be written on the same paper or parchment therewith before the registration, and must be truly set forth in the copy filed under the Act therewith and as part thereof^(g). And as regards a bill of sale subject to the Act of 1882, where the affidavit describes the residence of the person making or giving it to be in some place outside the London Bankruptcy district, or where the bill of sale describes the chattels as being in some place outside that district, an abstract of the contents of the bill of sale is to be transmitted by the registrar to the County Court registrar for the district, who is to file it, and allow searches to be made^(h).

Mode of registering bills of sale.

13. If two or more bills of sale are given, com- Priority of bills of sale.

to avoid registering at all. (*Smale v. Burr*, L. R. 8 C. P. 64; *Ramsden v. Lupton*, L. R. 9 Q. B. 17; *Ex parte Jackson*, 4 Ch. D. 682.)

^(f) The declaration of trust referred to means a declaration of trust in favour of the grantor. Consequently where a bill of sale was made to A., the money being really

advanced by B., it was decided that it was not necessary to state this fact on the bill of sale. (*Robinson v. Collingwood*, 34 L. J. C. P. 18.)

^(g) Act of 1878, s. 10.

^(h) Act of 1882, s. 11. See the Rules of December, 1882, for the purposes of this section.

prising in whole or in part any of the same chattels, they have priority under both Acts in the order of the date of their registration respectively as regards such chattels (*i*).

14. A transfer or assignment of a registered bill of sale need not be registered (*k*).

Renewal of
registration.

15. The registration of a bill of sale must be renewed once at least every *five years*, and if a period of *five years* elapses from the registration or renewed registration of a bill of sale without a renewal or further renewal (as the case may be), the registration becomes void. The renewal of a registration is effected by filing with the registrar an affidavit stating the date of the bill of sale and of the last registration thereof, and the names, residences, and occupations of the parties thereto as stated therein, and that the bill of sale is still a subsisting security; and a form of the affidavit is set forth in Schedule (A.) to the Act of 1878. A renewal of registration does not become necessary by reason only of a transfer or assignment of a bill of sale (*l*).

Bill of sale
subject to Act
of 1882 void
except as
against
grantor, as
regards chat-
tels not in
schedule, and
chattels of
which grantor
not the true
owner.

Exception of
growing crops
separately
assigned, and
fixtures sepa-
rately
assigned,
plant, &c.,
substituted
for scheduled
things of same
kind.

16. Sections 4 and 5 of the Act of 1882 provide that a bill of sale shall be void except as against the grantor, (1) in respect of any personal chattels not specifically described in a schedule to be annexed thereto or written thereon; and (2) in respect of any personal chattels specifically described in the schedule of which the grantor is not the true owner at the time of the execution of the bill of sale. But these sections do not apply to, (1) any growing crops separately assigned or charged where such crops are actually growing at the time when the bill of sale is executed, nor to (2) any fixtures separately assigned or charged, or any plant or trade machinery where such fixtures, plant or trade machinery are used in, attached to, or brought upon any land, farm, factory, workshop, shop,

(*i*) Act of 1878, s. 10. Under this section, a bill of sale which has been duly registered takes precedence of an unregistered bill of sale of prior date. (*Conelly v. Steer*, 7

Q. B. D. 520; *Lyons v. Tucker*, *ib.* 523.)

(*k*) Sect. 10.

(*l*) Sect. 11.

house, warehouse, or other place in substitution for any of the like fixtures, plant, or trade machinery specifically described in the schedule to the bill of sale (*m*).

17. Chattels comprised in a bill of sale to which the Act of 1882 applies, and which is duly registered under that Act are liable, notwithstanding the registration, to be seized and sold in the event of the grantor becoming bankrupt while the chattels remain in his possession, order, or disposition, in his trade or business, under such circumstances that he is the reputed owner thereof (*n*). But chattels comprised in a duly registered bill of sale to which the Act of 1878 applies, but the Act of 1882 does not apply (and consequently bills of sale given since 1882 by way of absolute transfer (*o*)), are not in the order and disposition of the bankrupt within the meaning of the Bankruptcy Act (*p*).

Order and disposition clause in Bankruptcy Act applies to chattels comprised in a bill of sale under Act of 1882, but not to bills of sale under Act of 1878 only.

18. Personal chattels assigned by a bill of sale as security for payment of money cannot be seized or taken possession of by the grantee for any other than the following causes: (1), If the grantor makes default in payment of the sum or sums of money thereby secured at the time therein provided for payment, or in the performance of any covenant or agreement contained in the bill of sale and necessary for maintaining the security; (2), If the grantor becomes a bankrupt or suffers the goods or any of them to be distrained for rent, rates, or taxes; (3), If the grantor fraudulently either removes or suffers the said goods or any of them to be removed from the premises; (4), If the grantor does not without reasonable excuse, upon demand in writing by the grantee, produce to him his last receipts for rents, rates, and taxes (*q*); (5), If execution has been levied against the

Chattels in bill of sale liable to seizure in certain events only.

(*m*) Sects. 4—6.

(*n*) Bankruptcy Act, 1883, s. 44; Bills of Sale Act, 1882, s. 15, repealing sect. 20 of Act of 1878.

(*o*) *Swift v. Pannell*, 24 Ch. D. 210. This was decided with reference to the Bankruptcy Act, 1869, but it is apprehended that the rule will be the same under the Act of 1883.

(*p*) Act of 1878, s. 20. This is so, notwithstanding the repeal of that section by sect. 15 of the Act of 1882, it being provided in sect. 3 of the latter Act that that Act shall not apply to duly registered bills of sale (under the Act of 1878), unless the context otherwise requires. (*Ex parte Izard*, 23 Ch. D. 409.)

(*q*) In a case where the grantor

goods of the grantor under any judgment at law. And the grantor may, within five days from the seizure or taking possession of any chattels on account of any of the above-mentioned causes, apply to the Court, or to a judge in chambers, and such Court or judge, if satisfied that by payment of money or otherwise the said cause of seizure no longer exists, may restrain the grantee from removing or selling the said chattels, or may make such other order as may seem just *(r)*.

Chattels not to be removed or sold for five days after seizure.

19. All personal chattels seized, or of which possession is taken on or after the 1st November, 1882, under or by virtue of any bill of sale (whether registered before or after that day), must be allowed to remain on the premises where they were so seized or so taken possession of, and cannot be removed or sold until after the expiration of five clear days from the day they were so seized or so taken possession of *(s)*.

Bill of sale not to protect chattels against poor and parochial rates.

20. A bill of sale to which the Act of 1882 applies is no protection in respect of personal chattels included in such bill of sale which but for such bill of sale would have been liable to distress under a warrant for the recovery of taxes and poor and other parochial rates *(t)*.

Inspection of registered bills of sale.

21. Any person may at reasonable times search the register, on payment of a fee, and make extracts of certain particulars *(u)*.

did not upon demand in writing by the grantee produce a receipt for rent which had only become due a few days before, and of which the landlord had not yet required payment, it was held that the grantor had not, without reasonable excuse,

failed to produce the last receipt. (*Ex parte Cotton*, 11 Q. B. D. 301.)

(r) Sect. 7.

(s) Act of 1882, s. 13.

(t) Sect. 14.

(u) Sect. 16.

III. *In what cases, having regard to the Bills of Sale Acts, a gift or sale of personal chattels is liable to be avoided under the statute 13 Eliz., or the trustee of a bankrupt can dispose of chattels in his possession as reputed owner under the order and disposition clause of the Bankruptcy Act.*

In Twyne's case an assignment by a debtor of his goods to one of his creditors was adjudged fraudulent and void against another creditor under the Act 13 Eliz. c. 5, on the ground (among others) that the grantor was permitted to retain possession. But in this and subsequent cases, the continuance in possession was treated as a mark only, and not as conclusive evidence of fraud; and where such possession was consistent with the terms of the deed, and the nature of the transaction, as in the case of a mortgage, the suspicion of fraud was rebutted, and the transaction could not be impeached under the Act of Elizabeth (x).

The Act 13 Eliz. c. 5, and the doctrine established in Twyne's case as regards the effect of the continuance in possession of the grantor, has been practically superseded by the enactments requiring registration. If, however, a gift or sale is carried into effect by mere delivery of the goods so as not to be within the operation of the Bills of Sale Acts, the Act of Elizabeth would still apply, and if the donor or vendor after such delivery was allowed to retake and to remain in possession, the *prima facie* presumption of fraud would require to be rebutted by evidence of *bona fides*. A *bona fide* agreement that the vendor should retain the goods on hire would be sufficient (y).

Actual fraud will always invalidate an alienation, whether by registered bill of sale or otherwise, and a voluntary bill of sale of chattels whether registered or

Twyne's case.

Alienation of chattels by registered bills of sale protected against 13 Eliz. c. 5.
But Act applies to other cases.

Actual fraud invalidates bills of sale, and voluntary bills of sale

(x) 3 Rep. 80. *Edwards v. Harben*, 2 T. R. 587; *Martindale v. Booth*, 3 B. & Ad. 498; *Cooke v. Walker*, 3 W. R. 357; *Weaver v. Joule*, 3 C. B. (N. S.) 309; *Macdonald v. Swiney*, 8 Ir. O. L. R. 73. See

also *Wooderman v. Baldock*, 6 Taunt. 676.

(y) *Byerley v. Prevost*, L. R. 6 C. P. 144. See also *Kidd v. Rawlinson*, 2 Bos. & Pul. 59.

void if donor
insolvent.

not, like any other voluntary conveyance of real or personal property, is under the Act of Elizabeth fraudulent and void against creditors, if the donor is at the time of making it in insolvent circumstances (z).

Although marriage is a valuable consideration, a settlement will be void under the Act of Elizabeth if the celebration of marriage is made part of a scheme for defeating the rights of creditors (a).

Order and dis-
position clause
in Bankruptcy
Act applicable
to bills of sale
by way of
security,

The Bankruptcy Act, 1883, includes, as part of the property divisible among the creditors of the bankrupt, "all goods being at the commencement of the bankruptcy in the possession, order and disposition of the bankrupt, in his trade or business, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof" (b).

but not to
bills of sale
between
1st January,
1879, and
1st November,
1882.

Previously to the passing of the Bills of Sale Act, 1878, it was decided that a registered bill of sale was no protection, as regards personal chattels not being fixtures comprised in it, against the operation of the order and disposition clause in the Bankruptcy Act then in force (c); and that it made no difference for the purpose of this enactment that the bill of sale was a mortgage, and that the mortgagor's possession was in accordance with its terms (d). Section 20 of the Act of 1878 gave an express protection against the order and disposition clause to bills of sale made on or after the 1st January, 1879, and duly registered, but that section has been repealed by section 15 of the Act of 1882 as regards instruments to which the last-mentioned Act applies. It follows that as regards personal chattels not being fixtures comprised in a bill of sale given by a trader before the 1st January, 1879, or comprised in a bill of sale given by a trader by way of security for money on or after the 1st November, 1882, and being goods in his possession in his trade or

(z) See Vol. 2, Settlements.

(a) *Columbine v. Penhall*, 1 Sm. & Giff. 228; see also *Penhall v. Elwin*, 1 Sm. & Giff. 258; *Bulmer v. Hunter*, L. R. 8 Eq. 46; *Ex parte Pennington*, W. N. 205.

(b) Sect. 44.

(c) *Stansfeld v. Cubitt*, 2 D. & J. 222.

(d) *Freshney v. Kerrick*, 1 H. & N. 653; 26 L. J. Ex. 129; *Spackman v. Miller*, 9 Jur. N. S. 50.

business, the order and disposition clause remains in force, notwithstanding that such bill of sale may be duly registered.

The order and disposition clause does not apply to chattels which have acquired the character of fixtures, whether the premises to which they are attached be freehold or leasehold, and whether as between landlord and tenant the fixtures are the absolute property of the landlord, or are removable by the tenant, and whether they are disposed of by the same instrument with the land, or separately (*e*), nor does it apply to goods in the bankrupt's possession otherwise than in his trade or business, *e.g.*, the furniture in his private residence.

Does not apply to fixtures.

If a tradesman in the ordinary course of his business has in his possession the goods of customers, such possession does not constitute him reputed owner, and the goods will not pass to the trustee on his bankruptcy. Thus, books deposited by the owner with a bookseller, and kept by him as a part of his general stock, and sold on commission, are not in the order and disposition of the bookseller (*f*). So books left with a publisher for sale in the usual course of trade (*g*), and furniture hired by an hotel keeper (*h*), do not, upon his bankruptcy, pass to the trustee.

Does not apply to goods retained by mortgagor in the usual course of trade.

So also carriages kept on the premises of a coachmaker for the true owner, although they may be placed in his front window and actually sold, are not in his order and disposition, as it is the custom of coachmakers to keep carriages after they are made and to exhibit them for display (*i*). So if a ship in course of construction is in the yard of the shipbuilder, or goods are being manufactured, such ship or goods if purchased are not in the order and disposition of

Carriages kept by coachmaker.

(*e*) *Ex parte Barclay*, 5 De G. M. & G. 403; *Whitmore v. Empson*, 23 Beav. 313; *Mather v. Fraser*, 2 K. & J. 536; *Walmisley v. Milne*, 29 L. J. (N. S.) C. P. 97.

(*f*) *Whitfield v. Brand*, 16 M. & W. 282.

(*g*) *Greenwood, Ex parte Thickbroom*, 6 L. T. N. S. 558; see also *Ex parte Wingfield*, 10 Ch. D. 591.

(*h*) *Crawcour v. Salter*, 18 Ch. D. 30.

(*i*) *Bartrum v. Payne*, 3 Car. & P. 175.

the shipbuilder or manufacturer (*k*). And in a case where a person advanced money on a ship in course of construction and took an assignment of such ship by way of mortgage to secure the repayment of the advance, it was held that the mortgage was good as against the assignees in bankruptcy of the shipbuilder (*l*).

Farming produce left on farm after sale.

There are also other instances in which custom will take the case out of the rule of reputed ownership. Thus where farming produce was purchased, and the price was paid before the bankruptcy, but it appeared to be the custom of farmers to leave such produce upon the farm of the seller until it suited the convenience of the buyer to take it away, it was held that this custom exempted such produce from passing to the assignees under the law of reputed ownership (*m*); and a similar decision was given in a case where butts of whisky were, in accordance with the custom of the trade, allowed to remain in the vendor's bonded warehouse after a sale (*n*).

Goods in possession of bankrupt on a contract of hiring.

Where a trader sells chattels and continues in possession on a contract of hiring and then becomes bankrupt, the goods will pass to the trustee in bankruptcy, unless the change of ownership has been made notorious (*o*), or unless the sale has been carried into effect by a bill of sale registered under the Bills of Sale Act, 1878 (*p*), or unless it is a well-known custom in the trade for goods of that description to be held on hire. And where there is no relation of vendor and purchaser, but the owner of chattels lets them to a trader who becomes bankrupt, the right of the owner as against the trustee in bankruptcy will still depend on whether such taking on hire is in accordance with notorious usage (*q*).

(*k*) *Holderness v. Rankin*, 28 Beav. 150; *Swainston v. Clay*, 4 Giff. 187.

(*l*) *Swainston v. Clay*, *ubi supra*.

(*m*) *In re Terry*, 11 W. R. 113.

(*n*) *Ex parte Watkins*, 8 Ch. 520; *In re Matthews*, 1 C. D. 501.

(*o*) *Lingard v. Mossiter*, 1 B. & C. 308; *Lingham v. Biggs*, 1 Bos. &

Pul. 384; *Ex parte Lovering*, L. R. 9 Ch. 621.

(*p*) Sect. 20.

(*q*) *Horn v. Baker*, 9 East, 215; *Rufford v. Bishop*, 5 Russ. 346; *Ex parte Powell*, 1 C. D. 501; *Mullet v. Green*, 8 Car. & P. 382; see *In re Hill*, 1 C. D. 503, n.

An ante-nuptial settlement whereby furniture or other chattels belonging either to the wife or the husband are assigned to a trustee in trust for the wife for her separate use is good against the trustee in bankruptcy of the husband, although at the date of the bankruptcy the goods are in the house in which they both reside^(r), and the deed need not be registered, being excluded from the operation of the Bills of Sale Act.

Ante-nuptial settlement of personal chattels supported against husband's bankruptcy.

A *bonâ fide* post-nuptial settlement made by a husband for the benefit of his wife, of furniture and other household effects which are in his possession at the date of the deed, is good, without any alteration of possession, and could not be defeated by his creditors, either under the 13 Eliz. c. 5, or in the event of his future bankruptcy, provided the settlement is duly registered in compliance with the provisions of the Bills of Sale Act^(s).

Post-nuptial settlements of personal chattels.

If during the coverture furniture and other household effects of the husband, which are in the joint possession of himself and his wife, are sold by him to a purchaser who then settles them on the wife for her separate use, such a settlement would, it is apprehended, be good as against the husband's creditors without any change of possession, if the sale is carried into effect by a bill of sale duly registered under the Act, and such bill of sale is followed by the settlement. The settlement would not require to be registered, as the settlor was never in possession of the goods.

Sale by husband of his furniture to a purchaser who settles it on the wife for her separate use.

In order to confer on the trustee in bankruptcy a right to sell the goods under the order and disposition clause, they must be in the bankrupt's possession as reputed owner at the time of the bankruptcy, with the *consent* of the true owner. If therefore the real owner has withdrawn his consent and taken steps to take possession, even though he may not have succeeded owing to the refusal of the debtor to give

In order to come within the order and disposition clause the goods must be in bankrupt's possession with consent of true owner.

^(r) *Simmons v. Edwards*, 16 M. & W. 838; see also *Haselinton v. Gill*, 3 T. R. 620; 1 R. & C. 666.

^(s) *Ashton v. Blackshaw*, L. R. 9 Eq. 510; *Ex parte Cox*, L. R. 1 O. D. 302.

them up or otherwise, the title of the trustee will be excluded (*t*). So also if the debtor has obtained possession of goods fraudulently, the right of the defrauded person to get them back is not defeated by the former's bankruptcy, unless the latter has known of the fraud for some time before the bankruptcy and delayed unreasonably to assert his right (*u*). In this respect there is an important difference between the "apparent possession" mentioned in the Bills of Sale Act, 1878, and "order and disposition" under the Bankruptcy Act.

Property held by bankrupt in trust excepted from Bankruptcy Act.

Order and disposition clause does not apply where possession is obtained or demanded without notice between act of bankruptcy and receiving order.

Property held by the bankrupt in trust for any other person is expressly exempted from the Bankruptcy Act (*x*).

Whenever possession is obtained, or demanded, between the act of bankruptcy of the debtor and the date of the receiving order without notice on the part of the grantee of such act of bankruptcy, the order and disposition clause of the Bankruptcy Act will not apply, as such possession or demand would be a dealing with the bankrupt within the meaning and protection of the 49th section (*y*). And the owner may avail himself of this clause, although he may have been informed before taking possession that an act of bankruptcy is in contemplation (*z*).

IV. *Under what circumstances a bill of sale of personal chattels is an act of bankruptcy, or is otherwise void under the bankruptcy law.*

What conveyances, &c., are made acts of bankruptcy by Act of 1883.

Under the Bankruptcy Act, 1883 (*a*), following in this respect the Act of 1869 (*b*), a debtor commits an act of bankruptcy in (among other cases) the following:—(A) If in England or elsewhere he makes a

(*t*) *Smith v. Topping*, 5 B. & Ad. 674; *Ex parte Harris*, L. R. 8 Ch. 48; *Re Eslick*, 4 C. D. 496; *Taylor v. Eckersley*, 5 C. D. 740.

(*u*) *Load v. Green*, 15 M. & W. 216; 15 L. J. Ex. 113.

(*x*) 32 & 33 Vict. c. 71, s. 15.

(*y*) See *Brewin v. Short*, 5 E. & B. 227; *Graham v. Furber*, 14 C. B. 134.

(*z*) *Re Wright*, 3 C. D. 70.

(*a*) 46 & 47 Vict. c. 52, s. 6.

(*b*) 32 & 33 Vict. c. 71.

conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally : (B) If in England or elsewhere he makes a fraudulent conveyance, gift, delivery, or transfer of his property, or of any part of it : (c) If in England or elsewhere he makes any conveyance or transfer of his property, or any part thereof, which would under that or any other Act be void as a fraudulent preference if he were adjudged bankrupt.

It has been long settled that a conveyance by a trader of all his effects, or of all his effects with a colourable or trifling exception, to one of his creditors to secure an antecedent debt, is an act of bankruptcy, although there may be no *actual* fraud, on the ground that the very nature of the transaction is such as to prevent him from carrying on his trade (c). In *Lindon v. Sharpe* (d), a trader assigned certain effects to the public officer of a banking company to secure the amount due on an overdrawn account. The bill of sale did not on the face of it purport to assign all the debtor's effects, but it appeared in fact that he had no other property, and that the bank knew that such was the case. The deed was held to be an act of bankruptcy, and void against the assignees.

Conveyance of all a trader's effects to secure an antecedent debt, an act of bankruptcy.

But an absolute sale to a *bonâ fide* purchaser of the whole of a trader's stock in trade is not an act of bankruptcy (e). So also a mortgage of the whole of a trader's stock in trade to secure a present advance is a valid transaction, and it makes no difference that the deed enables the mortgagee to seize after-acquired property, or that the advance bears a small proportion to the value of the goods assigned (f). It has been held, moreover, that a mortgage which on the face of

Sale to a *bonâ fide* purchaser of all a trader's effects not an act of bankruptcy nor a mortgage to secure a present advance.

(c) *Siebert v. Spooner*, 1 M. & W. 714; *Lindon v. Sharpe*, 6 Man. & Gr. 894; *Smith v. Cannan*, 2 El. & B. 35; *Ex parte Foxley*, L. R. 3 C. A. 515; *Ex parte Payne*, 11 Ch. D. 539.

(d) *Ubi supra*.

(e) *Baxter v. Pritchard*, 1 Ad. & El. 456.

(f) *Hutton v. Crutwell*, 1 El. & B. 15; 22 L. J. Q. B. 78; *Bittleston v. Cooke*, 6 El. & B. 296; 25 L. J. Q. B. 281; *Whitmore v. Claridge*, 31 L. J. Q. B. 141; 33 L. J. Q. B. 87; *In re Colemere*, L. R. 1 Ch. 128; *Woodhouse v. Murray*, L. R. 4 Q. B. Ex. Ch. 27; *Mercer v. Peterson*, L. R. 3 Exch. 104.

it appears to be made to secure an existing debt may be supported by evidence that it was made in pursuance of a parol agreement entered into at the time of the loan (*g*). But it must be made clear to the Court that the agreement was *bonâ fide*, and that it was not in fact an agreement that the bill of sale should be postponed until the grantor was on the eve of bankruptcy, or in order to protect his credit (*h*).

What is a substantial exception so as to prevent operation of doctrine.

Ex parte
Bailey.

When a portion of the trader's effects is excluded from the bill of sale, the question has to be decided whether the part so excluded is or is not a substantial part, so as to prevent the operation of the above doctrine, and this must depend on the particular circumstances of each case. In *Ex parte Bailey* (*i*), where a trader executed a bill of sale of certain policies of assurance, and all his credits, together with his books of account (being all his property except his furniture and stock in trade), and it appeared that executions had issued prior to the bill of sale, under which the furniture and stock in trade were seized, it was held that the assignment was void, although the bankrupt might not have been aware when he executed the assignment that the executions had issued. *Turner*, L. J., observed, "I apprehend that the true question is whether there is such an assignment as prevents the trade being carried on; and I agree with the learned Commissioner that carrying on trade means carrying it on in the usual and ordinary course. One reason why an assignment of the entire estate constitutes an act of bankruptcy is because the bankrupt is thereby prevented from carrying on trade, and this reason must equally apply if the assignment be such as to prevent the trade being carried on. Now this bankrupt has assigned all debts and all bills of exchange and promissory notes, and all books of account in which such debts or sums of money are entered; and it is, I think, impossible to say that trade can be

(*g*) *Harris v. Rickett*, 4 H. & N. 1; 28 L. J. Ex. 197.

(*h*) *Ex parte Fisher*, L. R. 7 Ch. 636; *Ex parte Burton*, 13 Ch. D.

102; *Ex parte Kilner*, *ib.* 245; *Ex parte Hauxwell*, 23 Ch. D. 626.

(*i*) 3 De G. M. & G. 534.

carried on in the usual and ordinary course without the books of account evidencing the debts which have been contracted in carrying on the trade." In *Younge v. Waud* (k), it was held that an assignment by way of mortgage by a trader of his stock and implements of trade, where such assignment did not include a moiety of the whole of his effects, was not *per se* an act of bankruptcy, although the effect of putting the instrument in force would be to stop the business. *Pollock, C.B.*, said, "The law is not that a man commits an act of bankruptcy by disabling himself from carrying on his business, but that he commits an act of bankruptcy when the necessary result of that act is to defeat or delay creditors who are not the objects of that particular conveyance." In *Hale v. Allnutt* (l), A., a trader, executed a mortgage of the public-house in which he carried on his business, and his trade and other fixtures and movable property in the house, other than his stock in trade, to B., to secure £570 then due. The value of the property mortgaged was between £300 and £400, and the value of the bankrupt's assets at the time was between £1,100 and £1,200; his debts amounted to nearly £4,000. It was held that the deed was valid. *Jervis, C.J.*, observed, "This does not fall within that class of cases in which an assignment has been made of the whole, or the whole with a colourable exception, of the trader's property; the necessary result of which is to defeat and delay creditors by producing absolute present insolvency and incapacity to carry on trade and withdrawing the whole of the property from the reach of the creditors by the ordinary legal remedies" (m).

In estimating whether a bill of sale comprises the whole of a trader's property the value of his book debts is to be taken into account (n).

(k) 18 Exch. 232.

(l) 13 C. B. 505.

(m) See also *Smith v. Cannan*, 2 El. & B. 35; *Johnson v. Fesemeyer*, 3 De G. & J. 13; *Mather v. Fraser*, 2 K. & J. 536; *Oriental Banking Co. v. Coleman*, 3 Giff. 11; *Smith*

v. Timms, 11 W. R. 381; *Ex parte Wensley*, 1 De G. J. & S. 275; *Goodricke v. Taylor*, 2 De G. J. & S. 135.

(n) *Ex parte Burton*, 13 Ch. D. 103.

Younge v. Waud.

Hale v. Allnutt.

Value of book debts to be calculated.

Where mortgage is partly for old debt and partly for new advance.

Where a trader assigns all his effects to a creditor in consideration partly of an existing debt, and partly of a new advance, the validity of the transaction depends on whether the object of the transaction is, by means of the new advance, to enable or assist the trader to continue his trade, or whether the new advance is colourable only, the real intention being to give a security for the past debt. Thus, in *Pennell v. Reynolds* (o), A., a trader, being indebted to B., executed to him a bill of sale of all his effects to secure the existing debt, and a present advance of £250, and it was held that such a bill of sale was not necessarily an act of bankruptcy. Willes, J., observed, "If there is an assignment of property with a real and substantial exception, in the absence of fraud that will not be an act of bankruptcy. In our judgment a present substantial advance of money puts the transaction upon the same footing as an assignment, with a substantial exception of part of the property. It is not necessarily an act of bankruptcy. The advance may be the means of enabling the assignor to go on with his trade, and if so, the transaction may be beneficial to the creditor" (p).

When bill of sale of all to secure past debt and future advances is good.

A bill of sale of all the debtor's property to secure a past debt and a future advance is good, if there is a contemporaneous agreement to make such advance to a sufficient amount, and such an advance is in fact made. The agreement need not be technically binding at law or in equity; a *bonâ fide* promise is sufficient. In the absence of such an agreement the bill of sale would be void (q).

Forbearance is not good consideration.

A forbearance to enforce an existing bill of sale is not a good consideration for supporting a subsequent bill of sale of the debtor's whole property to secure the pre-existing debt (r).

(o) 11 C. B. (N. S.) 709.

(p) See also *Bell v. Simpson*, 2 H. & N. 410; *Allen v. Bonnett*, L. R. 5 Ch. 577; *Lomax v. Buxton*, L. R. 6 C. P. 107; *In re Winstanley*, 1 C. D. 290; *In re Chapman*, 26 Ch. D.

338.

(q) *Ex parte Wilkinson*, 22 Ch. D. 788; *Ex parte Dunn*, 17 Ch. D. 26.

(r) *Ex parte Cooper*, 10 Ch. D. 313; *Ex parte Payne*, 11 Ch. D. 539.

The fact that a bill of sale of the whole of a debtor's property is made under pressure does not prevent it from being an act of bankruptcy (*s*).

When bill of sale of all made under pressure.

The Bankruptcy Act, 1883 (*t*), provides that the act of bankruptcy on which the adjudication is grounded must have occurred within three months before the presentation of the petition for adjudication. It follows that an assignment of the whole of a debtor's property to secure a pre-existing debt, cannot be impeached as an act of bankruptcy, unless the petition for adjudication is presented within three calendar months from the execution of the deed (*u*).

Bill of sale cannot be impeached as an act of bankruptcy, unless adjudication is within three months.

The Act also provides (*x*) that every conveyance or transfer of property, or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money, in favour of any creditor or any person in trust for any creditor, with a view of giving such creditor a preference over the other creditors, shall, if the person making, taking, paying, or suffering the same, is adjudged bankrupt on a bankruptcy petition presented within *three* months after the date of making, taking, paying, or suffering the same, be deemed fraudulent and void as against the trustee in the bankruptcy; but this section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the bankrupt.

Fraudulent preference.

Before the Act of 1869 the doctrine of fraudulent preference depended on judicial decisions. But since that Act the Court in determining what is a fraudulent preference will have regard to the statutory definition only, and is not bound by the old cases (*y*). The simple question now is whether the payment or transaction sought to be set aside was or was not made with a view

In determining what is fraudulent preference, statutory definition alone to be regarded.

(*s*) *Newton v. Chandler*, 7 East, 138; *Jones v. Hasker*, L. R. 6 Q. B. 77.

(*t*) 46 & 47 Vict. c. 52, s. 6.

(*u*) *Allen v. Bonnett*, L. R. 5 Ch. 577.

(*x*) Sect. 48. This is substanti-

ally a copy of sect. 92 of the Act of 1869.

(*y*) *Ex parte Griffith*, 23 Ch. D. 69; *Ex parte Taylor*, 18 Q. B. D. 295. The cases decided before 1869 are omitted in this edition for the reason stated above.

to give one creditor a preference over the others, and this is a question of fact to be determined by the Court or jury, according to the particular circumstances of each case. If the payment, &c., has been spontaneous on the part of the debtor, there would be a strong inference on the affirmative side; but if there had been pressure on the creditor's part it would still be a question whether the payment was made under the force of such pressure. If it appeared from all the circumstances that the dominant substantial view of the debtor was to give the preference, though this might not be the only motive, the payment would be an act of bankruptcy (*z*).

Provision as to voluntary settlements made by settlor.

The Bankruptcy Act, 1883, also provides (*a*) that any settlement of property, not being a settlement made before and in consideration of marriage, or made in favour of a purchaser (*b*) or incumbrancer in good faith and for valuable consideration, or a settlement made on or for the wife or the children of the settlor of property which has accrued to the settlor after marriage in right of his wife, shall, if the settlor becomes bankrupt *within two years* after the date of such settlement, be void against the trustee in the bankruptcy, and shall, if the settlor becomes bankrupt at any subsequent time within *ten years* after the date of such settlement, be void against the trustee in the bankruptcy, unless the parties claiming under the settlement can prove that the settlor was at the time of making the settlement able to pay all his debts without the aid of the property (*c*) comprised in the settlement, and that the interest of the settlor in such property had passed to the trustee of such settlement on the execution thereof. And any covenant or contract made in consideration of marriage for the future settlement upon or for the settlor's wife or children of any money or property wherein he had not at the date of his mar-

Covenants by settlor in consideration of marriage for future settlement.

(*z*) *Ex parte Hill*, 23 Ch. D. 695.

(*a*) Sect. 47.

(*b*) The word "purchaser" in this section means a buyer in the ordinary commercial sense, and not a purchaser in the strict legal sense.

Ex parte Hillman, 10 Ch. D. 622.

(*c*) In estimating such property the goodwill of a business is not to be taken into account. *In re Butterworth*, 19 Ch. D. 588.

riage any estate or interest, whether vested or contingent (*d*), in possession or remainder, and not being money or property of or in right of his wife, shall, on his becoming bankrupt before the property or money has been actually transferred or paid, pursuant to such contract or covenant, be void against the trustee in the bankruptcy. And the term "settlement" for the purposes of this section includes any conveyance or transfer of property.

V. *The proper mode of framing a bill of sale by way of mortgage.*

The principal points to be attended to in the preparation of a bill of sale by way of mortgage are (1) that the consideration is properly set forth, and (2) that the instrument is in accordance with the form in the schedule to the Act of 1882 (*dd*).

With respect to the consideration it has been decided (1), that money in fact owing from the mortgagor to the mortgagee may be properly stated as a sum of money then advanced and paid, it not being necessary that the form should be gone through of first paying off the debt and then readvancing the money (*e*); (2), that if the money expressed to be paid, or a part of it, is in fact, by the direction of the mortgagor, applied in payment of actual debts then owing from him, this does not render the deed void (*f*); but (3), that if part of the money is retained by the mortgagee for interest or a bonus (*g*), or to pay some debt not yet due (*h*), or even to pay the expense of preparing the mortgage deed, that expense not being in fact a debt due at the time, but one

What is a sufficient setting forth of the consideration.

(*d*) As to what is a vested or contingent interest within these words, see *Commell v. Keith*, 3 C. D. 767; *In re Andrews' Trusts*, 7 C. D. 635. See also on the construction of this section, *Ex parte Huxtable*, 2 C. D. 54.

(*dd*) See p. 722, *infra*.

(*e*) *Credit Co. v. Pott*, 6 Q. B. D. 295; *Ex parte Mercantile Bank*, 15 Ch. D. 42; *Ex parte Bolland*, 21 Ch. D. 543.

(*f*) *Hamlyn v. Betteley*, 5 C. P. D. 327.

(*g*) *Ex parte Charing Cross, &c., Bank*, 16 Ch. D. 35.

(*h*) *Ex parte Rolph*, 19 Ch. D. 98.

which does not arise until after the mortgage is complete (i), the bill of sale is void.

Bill of sale by way of mortgage must be made in accordance with statutory form.

A bill of sale by way of mortgage must in future be made *in accordance with* the form given in the schedule to the Act of 1882. As to the meaning of the words, "in accordance with," it was laid down in one case that "Every bill of sale must be substantially like the form in the schedule. Nothing substantial must be subtracted from it, and nothing actually inconsistent must be added to it" (j), and in a more recent case *Bowen, L. J.*, delivering the judgment of the full Court of Appeal, observed: "If but for section 9 the instrument as drawn would by virtue either of addition or omission have any legal effect which goes beyond or falls short of that which would result from the statutory form, then it is void. In order to be valid the bill of sale must produce not the like effect, but the same effect, *i.e.*, the legal effect, the whole legal effect, and nothing but the legal effect, as that of the statutory form" (k).

Points decided with respect to accordance with form.

In accordance with the above rules of interpretation the following points have been decided, viz. :—

1. The bill of sale must state a fixed principal sum, and nothing can be added to it, but rateable interest. The interest must not be capitalized, or a bonus made payable (l).

As to mode and time of payment of money.

But the principal money and interest may be made payable on a certain day, with a covenant, if it is not paid on that day, to pay interest thereon half-yearly until payment (m). So, also, the money may be made payable by instalments, and in that case a provision may be inserted to the effect that, if default is made in payment of one instalment, the whole amount then remaining unpaid shall become payable at once (n).

(i) *Ex parte Firth*, 19 Ch. D. 419. It is difficult to reconcile this decision with *In re Challoner*, 16 Ch. D. 260. See also *Ex parte Carter*, 12 Ch. D. 908; *Hamilton v. Chain*, 7 Q. B. D. 319.

(j) *Davis v. Burton*, 11 Q. B. D. 540.

(k) *In re Barber*, 17 Q. B. D. 259.

(l) *Davis v. Burton*, 11 Q. B. D. 537; *In re Williams*, 25 C. D. 656.

(m) *Watkins v. Evans*, 18 Q. B. D. 386; *In re Cleaver*, 18 Q. B. D. 489.

(n) *Lumley v. Simmons*, 34 C. D. 698.

2. The money must not be made payable on demand (*o*).

3. Covenants to insure and pay the necessary premiums, and to deliver to the mortgagee the last receipt if required, to replace and repair articles which may be destroyed, injured or deteriorated; not to remove chattels without mortgagee's consent; to pay rent, rates and taxes, are covenants necessary for maintaining the security, and therefore authorized by the statutory form. So also provisions enabling the mortgagee to seize and take possession in case of the nonperformance of any such covenants are valid (*p*). So are provisions enabling a mortgagee to add to the security, and retain out of the sale moneys any sums expended by him in insurance, or in payment of rent, rates or taxes, by reason of the mortgagor's neglect to do so (*q*); or the expenses incurred by him in or about the sale, or in seizing or taking possession of the chattels, or in defending or maintaining the security (*r*). So also is a provision enabling the mortgagee to break open doors and windows for the purpose of seizing and taking possession (*s*).

What covenants and provisions may be inserted as necessary for maintenance of security.

4. The insertion in a bill of sale of covenants agreed to by the parties for the maintenance of the security, but which are not necessary for that purpose within the meaning of sect. 7 of the Act, will invalidate the deed, if a power is given to the mortgagee to seize the goods for default in the performance of such covenants, but not otherwise (*t*).

5. A provision enabling a mortgagee to retain out of the sale moneys any expenses incurred by him "in relation to this security," is too wide, and invalidates the deed (*u*), and also a provision enabling a mort-

Provisions which have been held to be not necessary for maintenance of security.

(*o*) *Hetherington v. Groome*, 13 Q. B. D. 789; *Sibley v. Higgs*, 15 Q. B. D. 619.

(*p*) *Hammond v. Hocking*, 12 Q. B. D. 291; *Furber v. Cobb*, 18 Q. D. 494; *In re Cleaver, ubi supra*.

(*q*) *Goldstrom v. Tallerman*, 18 Q. B. D. 1.

(*r*) *Lumley v. Simmons*, 34 C. D. 698.

(*s*) *Re Morritt*, 18 Q. B. D. 222;

Lumley v. Simmons, ubi supra.

(*t*) *Topley v. Corsbie*, 20 Q. B. D. 350. In *Davis v. Burton*, 11 Q. B. D. 540, a bill of sale was held void because it contained a covenant to produce receipts for rates or taxes on demand in writing, "or otherwise," and a power to seize on breach of such covenant.

(*u*) *Calvert v. Thomas*, 20 Q. B. D. 204.

gagee who was an auctioneer, to retain a commission out of the sale moneys (*x*), and a provision exempting a purchaser from being bound or concerned to see whether default has been made (*y*), have been held to be fatal deviations from the statutory form.

Bill of sale by way of indemnity void.

6. A bill of sale given to a surety by way of security for money which he may be called upon to pay under a guarantee given by him is void, as not being in accordance with the statutory form (*z*).

The words "as beneficial owner" invalidate the deed.

7. The introduction of the words "as beneficial owner" invalidates the deed, on the ground that since the Conveyancing Act, 1881, they imply (*inter alia*) a covenant that in case of default the grantee may "enter into and upon or receive and thenceforth quietly hold, occupy, enjoy or take, and receive" the chattels assigned (*a*), and therefore confer on him by implication a right to remove and sell at once without waiting for the five days prescribed by the Act.

Chattels must be described in schedule.

8. The chattels must be described in the schedule, and not in the body of the deed (*aa*).

Bill of sale not in accordance with form, altogether void.

A bill of sale not in accordance with the form is void altogether, so that no action could be brought upon the covenant to pay (*b*), but of course if there is an actual loan, the principal money might be recovered in a common action for money lent, with interest at the legal rate. And if personal chattels and other property are mortgaged by a deed not in accordance with the statutory form, it is good as to the other property comprised in it (*c*).

Bill of sale of after-acquired chattels prior to late Act.

Previously to the late Act, it was a common practice to include in a bill of sale not only particular chattels in the grantor's possession at the time, but also chattels to be subsequently acquired in substitution for or in addition to them.

Effect of licence to seize after-acquired

The only benefit which *at law* could be conferred on the donee under a bill of sale as to after-acquired

(*x*) *Furber v. Cobb*, 18 Q. B. D. 494.

Q. B. D. 259.

(*y*) *Blaiberg v. Beckett*, 18 Q. B. D. 96.

(*aa*) *Thomas v. Kelly*, 13 App. Ca. 506, 520.

(*z*) *Hughes v. Little*, 18 Q. B. D. 33.

(*b*) *Davies v. Rees*, 17 Q. B. D. 408.

(*a*) Sect. 7 (*c*). *In re Barber*, 17

(*c*) *In re Burdett*, 20 Q. B. D. 310.

effects was a power or licence to seize them whenever they came into possession, and the title of the donee was acquired by his actually obtaining possession under the licence; but such a power was revocable by the donor, and had no effect *at law* as against persons claiming under any subsequent assignment from him, which might be executed before the donee had obtained actual possession of them (*d*).

goods at common law.

In equity, however, a deed made for valuable consideration, and purporting to assign chattels to be afterwards acquired, and so described as to be capable of being identified, operated as a contract which fastened on the goods directly they came into the grantor's possession, and of which specific performance would be enforced. The instrument therefore in equity passed the property in the goods, when acquired, to the grantee (*e*).

A bill of sale of after-acquired chattels, if specific, operated in equity as a contract, and passed the property, when acquired, to the grantee.

But as the assignment was good in equity only, it followed that if the grantor made a second bill of sale after the goods came into his possession, in favour of a purchaser or mortgagee for valuable consideration without notice of the first one, the second grantee would have priority over the first, by virtue of the equitable doctrine that where two persons have equal equities the legal title will prevail (*f*). It makes no difference in this respect that since the passing of the Judicature Act equitable interests are recognized by all branches of the Court (*g*).

A second bill of sale made for valuable consideration without notice, after the goods have been acquired, would have priority. *Semble.*

(*d*) *Carr v. Acraman*, 11 Exch. 566; *Congreve v. Evetts*, 10 Exch. 298; *Thompson v. Cohen*, L. R. 7 Q. B. 527.

(*e*) *Holroyd v. Marshall*, 10 H. L. C. 191; *Clements v. Matthews*, 11 Q. B. D. 808; *In re Clarke*, 36 C. D. 348. The Court in the latter case disapproved of *Belding v. Read*, 34 L. J. Ex. 212. The same principle applies to other property besides chattels. Thus, an assignment of future book debts, though not limited to book debts in any particular business, would be good. (See *Tailby v. Official Receiver*, 13 App.

Cas. 523.)

(*f*) *Lazarus v. Andrade*, 5 C. P. D. 318; *Joseph v. Lyons*, 15 Q. B. D. 280; *Hallas v. Robinson*, 15 Q. B. D. 288.

(*g*) The observation of Lopes, J., in *Lazarus v. Andrade*, 5 C. P. D. 320, that "property to be afterwards acquired may be, not only in equity, but also at law, the subject-matter of an assignment for value, must be understood as merely meaning that the validity of such an assignment must now be recognized by every branch of the Court."

Act of 1882
prohibits in
effect a mort-
gage of after-
acquired
chattels.

What has been above stated as to the operation and effect of an assignment of after-acquired chattels is still applicable to a bill of sale not coming within the Act of 1882; but the effect of that Act, according to the judgment of the House of Lords in a recent case (*h*), is to prohibit altogether and render void a bill of sale by way of security of after-acquired chattels, except such as are described in sub-sect. 2 of sect. 6.

Statutory
form should
be followed
exactly.

The only safe course to take in the preparation of a bill of sale is to follow the statutory form without variation, except in those particulars in which the form itself allows one.

(*h*) *Thomas v. Kelly*, 13 App. Ca. 506.

No. I.

ASSIGNMENT *of PERSONAL CHATTELS to a PURCHASER* (a). OF CHATTELS
TO PURCHASER.

THIS INDENTURE, made the — day of —, BETWEEN
A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. Parties.
(*purchaser*), of the other part: WITNESSETH, that in con- Consideration.
sideration of the sum of £— paid by the said C. D. to the
said A. B. on or before the execution of these presents, by way
of purchase-money (the receipt whereof the said A. B. hereby Assignment by
vendor to pur-
chaser.
acknowledges), the said A. B. hereby assigns unto the said
C. D. ALL the furniture and household effects in and about the
messuage or dwelling-house situate at, &c. (*describing it*), which
furniture and effects are now in the possession of the said
A. B., who is the tenant of the said dwelling-house, until the
— day of — next, To HOLD the same unto the said C. D.
from and after the determination of the tenancy of the said
A. B. absolutely.

IN WITNESS, &c.

Signed, sealed, and delivered by the
within-named A. B., in the presence of
L. M., of, &c., a solicitor of the Supreme
Court of Judicature, the effect of the
within-written indenture having been
first explained to the said A. B. by the
said L. M. (b).

No. II.

ASSIGNMENT *of FURNITURE and HOUSEHOLD EFFECTS* OF FURNITURE,
ETC., BY WAY
OF GIFT.
by ONE of several JOINT TENANTS to the others (c).

THIS INDENTURE, made the — day of —, BE-
TWEEN A. B., of, &c. spinster (*assignor*), of the one part, Parties.

(a) An assignment of chattels to a purchaser is unusual, as they are generally delivered to him, but cases may happen in which immediate possession cannot be conveniently given. This deed will require to be registered under the Act of 1878.

(b) See Act of 1878, s. 10.

(c) This deed will not require registration, as the chattels will not remain in the grantor's possession.

**OF FURNITURE,
ETC., BY WAY
OF GIFT.**

Recite that
assignor and
assignees, who
are sisters,
are joint
owners of
furniture ;

and that one
is desirous of
giving her
share to the
others.

Witnessing
part.

One sister
assigns her
share and
interest in
furniture, &c.,
to the others.

and C. B. and D. B., both of the same place, spinsters, sisters of the said A. B., (*assignees*) of the other part: WHEREAS the said A. B., C. B., and D. B. are joint owners of the furniture and effects hereinafter mentioned, the same having been bequeathed to them by the will of their father, X. B., deceased: AND WHEREAS the said A. B., being about to marry, is desirous of giving her share and interest in the said furniture and effects to her sisters in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that the said A. B., in consideration of her natural love and affection for the said C. B. and D. B., hereby assigns unto them; ALL the share and interest of her the said A. B. in the furniture, plate, china, linen, books, and other household effects in and about the messuage or dwelling-house situate at, &c. in which they the said A. B., C. B., and D. B. reside: To HOLD the same unto the said C. B. and D. B. absolutely.

IN WITNESS, &c.

No. III.

OF CHATTELS.

**BILL of SALE of CHATTELS by way of MORTGAGE, being the
STATUTORY FORM.**

Parties.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*mortgagor*), of the one part, and C. D., of, &c. (*mortgagee*), of the other part, WITNESSETH that in consideration of the sum of £— now paid to the said A. B. by the said C. D. (the receipt whereof the said A. B. hereby acknowledges), (*or whatever else the consideration may be*), the said A. B. doth hereby assign unto C. D., his executors, administrators, and assigns, ALL and singular the several chattels and things specifically described in the schedule hereto annexed, by way of security for the payment of the sum of £— and interest thereon at the rate of £— per cent. per annum (*or whatever else may be the rate*): AND the said A. B. doth agree that he will pay to the said C. D. the principal sum aforesaid, together with the interest then due, on the — day of — next (*or whatever else may be the stipulated times or time of*

Assignment of
chattels to
mortgagee to
secure pay-
ment of prin-
cipal money
and interest.

Agreement by
mortgagor to
pay principal
money and in-
terest.

payment): AND the said A. B. doth also agree with the said C. D. that he will (*here insert terms as to insurance, payment of rent, or otherwise, which the parties may agree to for the maintenance or defeasance of the security*): PROVIDED ALWAYS, that the chattels hereby assigned shall not be liable to seizure, or to be taken possession of by the said C. D. for any cause other than those specified in section 7 of the Bills of Sale Act (1878) Amendment Act, 1882.

OF CHATTELS.

Chattels to be liable to seizure for causes specified in sect. 7.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

Signed and sealed by the within-
named A. B. in the presence of me, }
E. F. (*add witness's name, address,
and description*).

No. IV.

BILL of SALE of CHATTELS, by way of MORTGAGE being the
STATUTORY FORM with the blanks filled up.

OF CHATTELS.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*mortgagor*), of the one part, and C. D., of, &c. (*mortgagee*), of the other part, WITNESSETH that in consideration of the sum of £—— (*a*) now paid to the said A. B. by the said C. D. (the receipt whereof the said A. B. hereby acknowledges), the said A. B. doth hereby assign unto the said C. D., his executors, administrators, and assigns, ALL and singular the several chattels and things specifically described in the schedule hereunto annexed (*b*) by way of security for the

Assignment of chattels to mortgagee to secure payment of principal money and interest.

(*a*) This must not be less than £30. If the consideration is an antecedent debt, say, in consideration of the sum of £—— now owing from the said A. B. to the said C. D.

(*b*) In a case where the schedule described the chattels as "450 pictures in gilt frames, &c.," it was held that this was not a specific description,

OF CHATTELS.

Agreement by
mortgagor to
pay principal
money and
interest,

to insure
against fire;

to pay rent,
rates, and
taxes, and pro-
duce receipts.

payment of the sum of £——, and interest thereon after the rate of £—— per cent. per annum: AND the said A. B. doth agree that he will pay to the said C. D. the principal sum aforesaid, together with the interest then due, on the —— day of —— next, and if the said principal sum is not paid on that day, then will pay interest thereon, or on so much thereof as shall for the time being remain owing after the rate aforesaid, half yearly, on the —— day of ——, and the —— day of —— (c). AND the said A. B. doth also agree with the said C. D. that he will at all times during the continuance of this security keep the said chattels and things insured against loss or damage by fire, in the sum of £—— at least, in the —— Insurance Office, or in some other insurance office to be approved of by the said C. D., his executors, administrators, or assigns (d); and also duly and regularly pay the rent, rates, and taxes payable by him in respect of the said messuage or dwelling-house; and also will produce to the said C. D., his executors, administrators, or assigns, upon demand in writing, the last receipt for such rent, rates, or taxes, and the policy of such insurance as aforesaid and the receipt for the last premium payable in respect thereof, unless he shall have a reasonable excuse for not doing so:

and that the deed was invalid against an execution creditor under the above. (See *Witts v. Banner*, 20 Q. B. D. 114.)

(c) If the money is to be paid by instalments, the following form of covenant may be substituted:

And the mortgagor hereby agrees and declares that he will pay to the mortgagee the said principal sum of £——, by equal monthly instalments of £—— each, the first instalment to be paid on the 1st day of —— next, and the remaining instalments to be paid on the first day of every subsequent calendar month until the whole principal money shall be paid, and also will on the same monthly days respectively pay to the mortgagee the interest then due on the principal sum for the time being remaining unpaid: PROVIDED ALWAYS, that if any monthly instalment shall be in arrear for 14 days, the whole of the principal money then remaining unpaid shall become payable immediately.

(d) Sect. 19, sub-sect. 2, and sect. 23 of the Conveyancing Act, 1881, apply to personal chattels such as are the subject of this bill of sale, so that a provision enabling the mortgagee to insure in case of the mortgagor's default is unnecessary.

PROVIDED ALWAYS (e), that the chattels hereby assigned shall not be liable to seizure or to be taken possession of by the said C. D. for any cause other than those specified in section 7 of the Bills of Sale Act (1878) Amendment Act, 1882.

IN WITNESS, &c.

OF CHATELS.
Chattels to be
liable to
seizure for
causes spe-
cified in
sect. 7.

THE SCHEDULE ABOVE REFERRED TO (f).

Signed and sealed by the within-
named A. B. in the presence of me, }

E. F. (*add witness's name, address,
and description*).

No. V.

MEMORANDUM of SATISFACTION INDORSED on a BILL
OF SALE.

MEMORANDUM
OF SATISFAC-
TION ON BILL
OF SALE.

MEMORANDUM that all the money received by the within-written deed has been satisfied.

(Signed) C. D.

WITNESS, &c.

(e) A power to seize and take possession, and to sell after five days, may be conferred in express terms. (See *In re Morritt*, 28 Q. B. D. 222; *Calvert v. Thomas*, 19 Q. B. 204; *Lumley v. Simmons*, 34 C. D. 698.) But it is unnecessary to do so, as these powers are conferred by sects. 7 and 13 of the Act by implication.

(f) The schedule should contain a specific description of the chattels. If the bill of sale is of growing crops they should be described in the schedule, and not in the body of the deed, thus:

All the crops of grass, wheat, and barley, and other crops now growing in or upon the farm and lands called —, situate, &c., now in the occupation of the mortgagor.

If it is intended to include in the bill of sale fixtures, plant, or machinery to be substituted for the existing fixtures, &c., the following words should be added in the schedule after the specific description of the existing things:

And also all the fixtures, plant, and trade machinery which may at any time hereafter during the continuance of this security be erected on, or attached to, or brought upon the said — (*house or land*), in substitution for any of the like fixtures, plant, and trade machinery above specifically described.

No. VI.

CONSENT TO
ORDER OF
SATISFACTION.

CONSENT *by GRANTEE of BILL of SALE to an ORDER to
enter SATISFACTION.*

In the High Court of Justice.

Queen's Bench Division.

I, C. D., of, &c., Do HEREBY consent to an order that a memorandum of satisfaction be written upon the copy of the bill of sale given to secure the sum of £— and interest bearing date the — day of —, 18—, made between A. B. of the one part and me of the other part, and filed on the — day of —, 18—, the debt for which the said bill of sale was given as a security having been satisfied. Dated the — day of —, 18—.

(Signed) C. D.

No. VII.

AFFIDAVIT
PURSUANT TO
ACT OF 1882.

AFFIDAVIT *to be FILED PURSUANT to BILLS of SALE
Act of 1882.*

In the High Court of Justice.

— Division.

18— No.

I, L. M., of —, in the county of —, make oath and say, as follows:—

1. The paper writing hereunto annexed and marked A is a true copy of a bill of sale, and of the schedule or inventory thereto annexed or therein referred to, and of the [*or every, if there are two attesting witnesses*] attestation of the execution thereof, as made and given and executed by A. B.

2. The said bill of sale was made and given by the said A. B. on the — day of —, 18—.

3. I was present, and saw the said A. B. duly execute the said bill of sale on the said — day of —, 18—.

AFFIDAVIT
PURSUANT TO
ACT OF 1882.

4. The said A. B. resides at, &c. (*state residence at time of swearing affidavit*), and is, &c. (*state occupation*).

5. The name L. M. subscribed to the said bill of sale as that of the witness attesting the due execution thereof is in my proper handwriting (*a*).

6. I reside at —, in the county of —, and am (*occupation*).

SWORN, &c. (*b*).

(*a*) If there are two attesting witnesses, substitute for paragraph 5:—

5. The names L. M. and G. H. subscribed as witnesses attesting the execution of the said bill of sale are respectively in the handwriting of me and of the said G. H. I reside at —, and am —, and the said G. H. resides at —, and is a grocer.

(*b*) The affidavit to be filed with the bill of sale must state the residence and occupation of the assignor and every attesting witness. "Gentleman," is not a sufficient description of a solicitor or of a solicitor's clerk (*Tuton v. Sanoner*, 4 Jur. N. S. 365; 27 L. J. Ex. 293; *Dryden v. Hope*, 9 W. R. 18), or of a clerk in the audit office (*Allen v. Thomson*, 2 Jur. N. S. 45), or of any person having a fixed profession, business, or avocation (*Adams v. Graham*, 33 L. J. Q. B. 71; *Beale v. Tenant*, 6 Jur. N. S. 628); but it is not necessary to mention an avocation which has only been temporarily or casually followed, or one in which he is not at present actively engaged, being out of employment. (*Brodrick v. Scale*, L. R. 6 C. P. 98; *Smith v. Cheese*, 1 C. P. D. 60; *Morewood v. South Yorkshire Co.*, 28 L. J. Ex. 114.) A lessee and manager of a theatre, or a merchant, is not properly described as "esquire" (*Ex parte Hooman*, L. R. 10 Eq. 63; *Re O'Connor*, 27 L. T. 27); nor a clerk in an accountant's department as an "accountant." (*Larchin v. North Western Deposit Bank*, L. R. 8 Exch. 80.) On the other hand, a clerk in the Admiralty has been held to be sufficiently described as a government clerk (*Grant v. Shaw*, L. R. 7 Q. B. 700); and a grantor who has been in business until a few weeks before the bill of sale and was then in treaty for another business, was held to be properly described as widow. (See *Re Esther Davey*, W. N. 1881, pp. 56, 109.)

Occupation of assignor and attesting witnesses must be stated in affidavit.

Cases of insufficiency of description.

The residence meant by the Act is the place where the person carries on business and can be found during the day, not the place where he merely sleeps at night. (*Attenborough v. Thompson*, 3 Jur. N. S. 1307; *Blackwell v. England*, 8 El. & Bl. 541; *Briggs v. Moss*, L. R. 3 Q. B. 268; *Hewer v. Cox*, 30 L. J. Q. B. 73; *Blount v. Harris*, 4 Q. B. D. 603.) Where a house is in a street, the No. must be accurately stated (*Murray v. Mackenzie*, L. R. 10 C. P. 625); but if the description given is such as cannot mislead creditors, an unimportant mistake will not be fatal, as where New Street, Blackfriars, was stated as in the county of Middlesex instead of in the city of London. (*Hewer v. Cox*, 30 L. J. Q. B. 73; *Ex parte M'Hattie*, 10 Ch. D. 398.)

Residence within meaning of Act.

**AFFIDAVIT
PURSUANT TO
ACT OF 1882.**

Description
of company.

Affidavit must
contain the
description
either ex-
pressly or
by reference.

Description
of residence
of grantor.

Affidavit must
state that
attesting
witness was
present.

Where there
are two resi-
dences.

Affidavit on
re-registra-
tion.

A description of the residence of the attesting witness in the introductory part of the affidavit is sufficient. (*Blaiberg v. Parke*, 10 Q. B. D. 90.)

An affidavit filed with a bill of sale, describing a company by its name, and stating the address of its principal office, is a sufficient compliance with the Act. (*Shears v. Jacob*, L. R. 1 C. P. 513.)

It is not sufficient that the bill of sale contains a description of the residence and occupation of the assignor and the attesting witnesses: the affidavit filed with the bill of sale must contain such description also, either expressly or by reference. Thus it is not sufficient to state in the affidavit that the grantor is the person named in the bill of sale unless it be averred that he is truly described therein. (*Hatton v. English*, 7 El. & B. 94; 26 L. J. Q. B. 161; *Pickard v. Bretts*, 29 L. J. Ex. 18; see also *Wilcoxon v. Searby*, 29 L. J. Ex. 154.)

The description of the residence of the grantor to be stated in the affidavit should be his residence at the time of swearing the affidavit, and not at the time of executing the bill of sale. (*Button v. O'Neill*, 4 C. P. D. 354.) But in a case where between the date of the execution of the bill of sale and the date of the affidavit, the maker left his residence and sailed for America, it was held that the affidavit which described him as in the bill of sale was sufficient. (*In re Hewer*, 21 Ch. D. 571.)

The affidavit must also state that the attesting witness was present at the time of the execution by the grantor and witnessed the due execution by him. (*Ford v. Kettle*, 9 Q. B. D. 139; *Sharpe v. Birch*, 8 Q. B. D. p. 111.)

If the donor has two residences he is not sufficiently described in the bill of sale and affidavit if only one of the residences is therein mentioned. (*Wallis v. Smith*, W. N. 1882, p. 77.)

The affidavit made on the re-registration of a bill of sale must correspond with that made on the original registration. (*Ex parte Webster*, 22 Ch. D. 136.)

ARRANGEMENTS WITH CREDITORS.

ARRANGEMENTS by a debtor with his creditors may be conveniently divided into—(1) those made without proceedings in bankruptcy, which may be called private arrangements, and (2) those made with the sanction and subject to the control of the Court after proceedings in bankruptcy have been commenced.

Arrangements
with creditors.

As to Private Arrangement Deeds.

Under the Bankruptcy Act, 1869, and previous Acts, a private arrangement assented to by a certain majority in number and value of the creditors, and made in accordance with conditions prescribed by statute, was binding on the remaining creditors, though they might dissent. The law in this respect is altered by the Act of 1883, and as the law now stands a private arrangement binds only those creditors who assent to it.

Private
arrangement
deeds.

As law now
stands, cannot
be made to
bind dissen-
sient creditors.

Private arrangements ordinarily (though not always) take the form of an assignment of the whole or the bulk of the debtor's property to trustees for division among the creditors (a). Such an assignment is itself an act of bankruptcy, and any creditor may, instead of coming in under it, make it the ground of a petition for adjudication, provided that his petition is presented within three calendar months after the execution of the deed. Adjudication avoids the assignment, and the debtor's property will vest in the trustee in bank-

Assignment of
all the debtor's
property for
benefit of
creditors, an
act of bank-
ruptcy.

(a) As to voluntary assignments for benefit of creditors, see Vol. II.

ruptcy, and be distributable by him according to the law of bankruptcy.

Sometimes the creditors are willing to accept a composition unaccompanied by a *cessio bonorum*, and in such cases the composition is generally made payable by instalments, and secured by a joint and several covenant of the debtor and a surety, or by joint and several promissory notes given by them.

Private
arrangement
deeds must be
registered.

By a recent Act (*b*) all instruments made after the 1st January, 1888, whether under seal or not, made by, for, or in respect of the affairs of a debtor for the benefit of his creditors generally (otherwise than in pursuance of the bankruptcy laws), that is to say, an assignment of property, a deed of or agreement for a composition, a deed of inspectorship, letter of license, and any agreement or instrument for carrying on or winding up the debtor's business, are required to be registered in the manner provided by the Act within seven clear days after the first execution thereof by the debtor or any creditor, or if executed abroad within such further time as therein mentioned. Every such deed must also be duly stamped with the proper inland revenue duty, and also with a stamp denoting a duty at the rate of one shilling for every 100*l.* of the sworn value of the property passing, or (where no property passes) the amount of composition payable under the deed.

As to Compositions under the Bankruptcy Act.

Schemes of
arrangement
under Bank-
ruptcy Act.

The Bankruptcy Act, 1883, sect. 19, authorizes the creditors, at a meeting, by special resolution to entertain a proposal for a composition, or a scheme of arrangement of the debtor's affairs, and the composition or scheme, if confirmed by a resolution passed at a subsequent meeting by a majority in number representing three-fourths in value of all the creditors, and approved by the Court, is binding on all the creditors.

(*b*) 50 & 51 Vict. c. 57.

No. I.

ASSIGNMENT *by a DEBTOR of all his PERSONAL ESTATE*
to TRUSTEES for the benefit of his CREDITORS (a).

OF PERSONAL
 ESTATE
 FOR BENEFIT
 OF CREDITORS.

THIS INDENTURE, made the — day of —, BETWEEN
 A. B., of, &c. (*debtor*), of the first part; C. D., of, &c., and
 E. F., of, &c., (hereinafter called “the trustees”), of the second
 part, and the several persons and firms, creditors of the said
 A. B., who or whose attorneys or agents (*b*) on their behalf
 execute or otherwise accede to these presents, of the third part.
 WHEREAS it has been agreed between the said A. B. and his
 creditors that such arrangement shall be made as is hereinafter
 expressed: AND WHEREAS the said A. B. has furnished a state-
 ment of his affairs to the trustees, and from such statement it
 appears that his property consists of the particulars set forth
 in the first schedule hereto: AND WHEREAS the names of the
 creditors and of the amounts owing or claimed to be owing to
 them respectively, are inserted or intended to be inserted in the
 second schedule hereto. NOW THIS INDENTURE WIT-
 NESSETH, as follows:

Parties.

Recital of
 agreement for
 arrangement;
 that debtor
 has furnished
 statement of
 his affairs to
 trustees.

Witnessing
 part.

1. In consideration of the release hereinafter contained the
 said A. B. as beneficial owner hereby assigns unto the trustees
 All the personal property of the said A. B. mentioned in the
 first part of the first schedule hereto: To HOLD the same unto the
 trustees upon the trusts and with and subject to the powers and
 provisions hereinafter declared and contained concerning the
 same.

Debtor assigns
 personal pro-
 perty to
 trustees.

AND IT IS HEREBY AGREED AND DECLARED as follows:

2. THE trustees shall sell, call in, and convert into money the
 premises hereby assigned, at such times and in such manner as
 they shall think fit, and shall, with and out of the moneys
 to arise thereby, in the first place pay and retain all costs,
 charges, and expenses of and incidental to the preparation and
 execution of these presents and the negotiations preparatory

Trust for sale
 and conver-
 sion,

and to pay

(1) costs and
 expenses of
 arrangement

(a) This deed, and the following ones under this head, must be regis-
 tered under the Deeds of Arrangement Act, 1887, and the Land Charges
 Registration and Searches Act, 1888. See *supra*, p. 169.

(b) Includes one member of a firm signing on behalf of the firm.

OF PERSONAL
ESTATE
FOR BENEFIT
OF CREDITORS.

(2) preferen-
tial debts in
full;

(3) divide
residue among
creditors
rateably;

and pay over
surplus (if
any) to
debtor

Power to post-
pone sale and
conversion,
and to manage
business in
meantime.

Trustees to
have power to
require evi-
dence of
alleged debts,

and to com-
promise, &c.

Debtor to fur-
nish accounts
to trustees if
required.

hereto, and all costs, charges, and expenses of and incidental to the execution of the trusts and powers of these presents: AND shall in the next place pay in full all those debts of the said A. B. which by Section 40 of the Bankruptcy Act, 1883, are directed to be paid in priority to other debts: AND shall divide the residue of the said moneys among the parties hereto of the third part rateably according to the amount of their respective debts, in like manner as if the said A. B. had been adjudged a bankrupt on the day of the date of these presents, and so that all debts which would have been proveable against the estate of the said A. B. in bankruptcy shall be proveable in like manner against his estate under these presents: AND if the said moneys shall be more than sufficient to pay the said debts in full, they shall pay the ultimate surplus to the said A. B.

3. THE trustees may postpone the sale and conversion of any part of the said premises hereby assigned for so long as they shall think fit, and may in the meantime carry on and manage the business of the said A. B., and may employ the said A. B. in and about the management and winding up thereof, and may allow him any reasonable remuneration for his trouble therein. And all moneys received by the trustees in respect of the profits of the said business or otherwise from the said trust premises shall be applicable in like manner as the trust moneys mentioned in Article 2.

4. THE execution of these presents by any person claiming to be a creditor of the said A. B., and the insertion in the second schedule hereto of the amount supposed or claimed to be owing to him, shall not preclude the trustees from questioning the validity or amount of the alleged debt, or from requiring such evidence thereof as they may think fit. And the trustees may compromise or submit to arbitration or otherwise settle any debt claimed to be due and owing from the said A. B., and any difference or dispute which may arise between them and any person whomsoever respecting the trust estate or any claim or demand thereon.

5. THE said A. B. shall from time to time furnish to the trustees such further statements and accounts of his property, and of his debts and engagements, and of all particulars relating thereto, together with such evidence in verification of such statements and accounts as they shall require.

6. If it shall hereafter appear (c) that the said A. B. has, at the date of these presents, any property to the value of £10 or upwards not included in the first schedule hereto, all such property shall, at the request of the trustees, and at the cost of the trust estate, be forthwith conveyed and assigned, or otherwise made over by the said A. B. unto the trustees, to be held by them upon the same trusts as are hereinbefore declared of and concerning the property hereby assigned, or as near thereto as the circumstances will permit.

OF PERSONAL
ESTATE
FOR BENEFIT
OF CREDITORS.

Debtor to
convey real
and leasehold
property (if
any) to
trustees.

7. In consideration of the premises, the parties hereto of the third part hereby release the said A. B. from all debts, claims, and demands whatever, subject nevertheless to the provisions hereinafter contained (d).

Release by
creditors.

8. NOTHING herein contained shall prejudice any right or remedy which any creditor may have against any person (e) other than the said A. B., nor prejudice or affect any mortgage, lien or security which any creditor may have on any property of the said A. B. or of any other person; but a creditor holding any mortgage, lien or security on any property of the said A. B. shall be entitled to receive a dividend in respect only of the amount of the debt owing to him after realising or giving credit for the value of such mortgage, lien or security, in like manner as he would have had to realise or give credit for the same in order to obtain a dividend in case of bankruptcy; and if the trustees and the secured creditors shall be unable to agree as to the value of the security, the value thereof shall be referred to two arbitrators, one to be appointed by each party, and in case

Release not to
prejudice
securities or
remedies
against third
persons,
but creditor
to be entitled
to dividend on
amount of
debt after
realizing or
giving credit
for value of
securities.

(c) Sometimes the deed purports to assign not only the specified property, but also all other the debtor's estate and effects. But as such a general description might pass property more conveniently dealt with by a separate instrument, e.g. real estate, leaseholds with onerous covenants, shares in companies, moneys owing on mortgages, &c.,—a covenant as above seems a more convenient plan.

(d) If the deed is avoided as an act of bankruptcy, and the debtor is made a bankrupt, this release is avoided also, and the executing creditors may prove in the bankruptcy. (*In re Stephenson*, 20 Q. B. D. 540.)

(e) A release given to the principal debtor discharges the surety also, unless the right to sue the latter is expressly reserved. In the case of such reservation, the surety if made to pay can proceed against the principal debtor to be indemnified, notwithstanding the release, or he may, if he pleases, come in for a dividend under the arrangement, in the place of the creditor whom he has paid, in which case he will be bound by the release. (*In re Whitehouse*, 37 C. D. 683.)

OF PERSONAL
ESTATE
FOR BENEFIT
OF CREDITORS.

Trustees to
have power to
avoid the deed
if any creditor
refuses to
accede.

Disputes to be
settled by
creditors at a
meeting.

Power to
appoint new
trustees.

of their disagreement, to an umpire to be appointed by the arbitrators before they proceed to business.

9. If any creditor or creditors whose debt or debts together amount to £— over and above the value of any security or securities held by him or them, shall refuse or decline to execute or accede to these presents, then and in such case it shall be lawful for the trustees, if they so think fit, to declare by writing under their hands, that these presents shall be void, and thereupon the same shall be void accordingly, and the said trust premises shall be re-assigned and restored to the said A. B.

10. If any difficulty or question shall arise in the execution of the trusts of these presents which the trustees may wish to refer to the creditors, they may call a meeting of the creditors for that purpose, to be held at such time and place as they shall appoint, and any resolution passed at such meeting by a majority in value of the creditors present and voting thereat, in reference to the matter referred to them, shall bind all the other creditors.

11. THE power of appointing new trustees conferred by the Conveyancing and Law of Property Act, 1881, shall apply to these presents [and be exercisable by the surviving or continuing trustee or trustees for the time being, or the personal representatives of the last surviving or continuing trustee: PROVIDED ALWAYS, that whenever a vacancy shall occur in the trusteeship, the person or persons in whom the statutory power shall be vested (hereinafter called "the donee or donees of the power") shall call a meeting of the parties hereto of the third part, at such time and place as he or they shall appoint, which meeting shall, by a majority in value of the creditors present and voting thereat, choose the trustee or trustees to supply the vacancy, and the donee or donees of the power shall appoint the person or persons so chosen; and the statement in the deed by which the donee or donees of the power appoint the new trustee or new trustees, that such new trustee or new trustees has or have been duly chosen at a meeting of creditors as aforesaid, shall be conclusive evidence of the fact so stated, in favour of any purchaser or other person deriving title to any part of the trust estate under these presents] (f); AND all trusts and powers hereby

(f) The portion of this clause within brackets may be omitted where it is thought that the power may be safely left in the surviving trustee, &c., without a meeting of creditors.

reposed and vested in the trustees may be exercised by the survivor of them, or other the trustees or trustee for the time being appointed under the said statutory power.

OF PERSONAL
ESTATE
FOR BENEFIT
OF CREDITORS.

12. ANY meeting of creditors hereby authorized to be called shall be summoned by sending a notice thereof through the post to each creditor or his agent at his usual or last known place of address in England or Wales, such notice to be posted fourteen days at least before the day of meeting.

How meetings
to be called.

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

The First Part (*property included in this assignment*).

1. The stock-in-trade, book-debts, credits, chattels, and effects belonging or owing to the said A. B. in connection with his business of —, carried on at —, and the goodwill of the said business.

2. The furniture and household effects (*g*) in and about the messuage or dwelling-house at —, wherein the said A. B. resides, except what is comprised in the Second Part of this schedule.

(*Add any other particulars.*)

The Second Part (*property excluded*).

The wearing apparel of the said A. B. and of the members of his family.

(*Add any other particulars.*)

THE SECOND SCHEDULE ABOVE REFERRED TO.

Name of creditor.	Amount of debt.

(*g*) This deed does not require registration as a bill of sale. See 41 & 42 Vict. c. 31, s. 4. See also *General Furnishing Co. v. Venn*, 2 H. & O. 153; 32 L. J. Ex. 220.

No. II.

OF FREEHOLD
PROPERTY
TO TRUSTEES
FOR SALE.

CONVEYANCE *by a DEBTOR of FREEHOLD property to TRUSTEES for SALE (to be followed by another deed declaring the trusts of the sale-money for the benefit of creditors) (a).*

Parties.

Debtor con-
veys freehold
property

to trustees in
trust to sell,

and hold sale
money and
rents and
profits until
sale in trust
for debtor.

Receipt of
trustees to be
a good dis-
charge, and
debtor's con-
currence in
sale not to be
required.

Power to
appoint new
trustees.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*debtor*), of the one part, and C. D., of, &c., and E. F., of, &c. (*trustees*), of the other part, WITNESSETH that the said A. B., being desirous of converting into money the hereditaments hereinafter described, doth hereby as beneficial owner convey unto the said C. D. and E. F. ALL, &c. (*parcels*) To HOLD the same unto and to the use of the said C. D. and E. F. in fee simple, in trust to sell the said premises at such time or times as they shall think fit, and to stand possessed of the moneys to arise from such sale (after payment thereof of the costs and expenses incidental thereto), and of the rents and profits of the premises until the sale thereof, in trust for the said A. B., his executors or administrators, or as he or they shall direct: AND IT IS HEREBY DECLARED that the receipt of the trustees for the money to arise from any such sale shall be an effectual discharge to the purchaser for the same, and the concurrence of the said A. B., his heirs, executors, or administrators, in such receipt, or in the conveyance of the said premises, shall not be necessary: AND IT IS DECLARED that the power of appointing new trustees conferred by the Conveyancing and Law of Property Act, 1881, shall apply to these presents.

IN WITNESS, &c.

(a) Where part of the debtor's property consists of land or houses it is better to convey it to the trustees by a separate deed. Otherwise, if the property is sold under the trust within three months from its date, the purchaser will refuse to complete, on the ground that the deed is an act of bankruptcy. It will be borne in mind, however, that even if the conveyance is by a separate deed, the trustees incur serious risk by selling within the three months: see *supra*, pp. 731, 733.

No. III.

ASSIGNMENT of LEASEHOLD property to TRUSTEES for
 SALE (to be followed by another deed declaring the trusts of
 the sale-money for the benefit of creditors) (a).

OF LEASEHOLD
 PROPERTY
 TO TRUSTEES
 FOR SALE.

THIS INDENTURE, &c. (*parties as in last Precedent*):
 WHEREAS (*recite lease to A. B.*): AND WHEREAS the said A. B.
 is desirous of vesting the said leasehold premises in the said
 C. D. and E. F. upon the trusts hereinafter declared: NOW
 THIS INDENTURE WITNESSETH, that the said A. B., as
 beneficial owner, hereby assigns unto the said C. D. and E. F.
 The messuage and premises comprised in and demised by the
 hereinbefore recited indenture of lease, To HOLD the same unto
 the said C. D. and E. F. for all the residue now unexpired of
 the term of years granted therein by the said indenture of lease,
 subject to the rent thereby reserved, and to the covenants and
 conditions therein contained and on the lessee's part to be
 observed and performed; NEVERTHELESS in trust to sell, &c.
 (*rest to be the same as last Precedent*).

Debtor assigns
 leasehold
 property to
 trustees,

in trust to
 sell, &c.

IN WITNESS, &c.

No. IV.

ASSIGNMENT by DEBTOR of PERSONAL ESTATE to TRUS-
 TEES, and DECLARATION of TRUST of proceeds of REAL
 ESTATE, comprised in Deed of even date, for benefit of
 CREDITORS.

TRUSTS FOR
 BENEFIT OF
 CREDITORS.

THIS INDENTURE, &c. (*date and parties as in No. 1, p. 731*): Parties.
 WHEREAS, &c. (*recitals as in Precedent No. 1*): AND WHEREAS

(a) It is assumed that the rent and covenants are not onerous. If they are, the trustees should decline to take an assignment, and the debtor should covenant by the principal deed to assign the property if required.

**TRUSTS FOR
BENEFIT OF
CREDITORS.**

Recital of conveyance and assignment of freeholds and leaseholds to trustees for sale.

Witnessing part.

Declaration of trust of proceeds of freehold and leasehold property.

Covenant by debtor to assign leaseholds and transfer stocks, &c., to trustees.

by two several indentures bearing even date with these presents the freehold and leasehold hereditaments and property described in the first part of the first schedule hereto have been conveyed and assigned, as to the said freehold hereditaments unto and to the use of the trustees in fee simple, and as to the said leasehold property unto the trustees for the unexpired residue of the term of years granted therein, IN TRUST to sell the same, and to stand possessed of the moneys to arise from such sale after payment thereof of the costs and expenses incidental thereto, and of the rents and profits of the said premises until the sale thereof, in trust for the said A. B., his executors or administrators, or as he or they shall direct: NOW THIS INDENTURE WITNESSETH and DECLARES as follows:

1. In consideration of the release hereinafter contained, the said A. B. hereby directs, and it is hereby agreed and declared, that the trustees shall stand possessed of the moneys to arise from the sale of the freehold and leasehold hereditaments and property comprised in the said indentures bearing even date herewith, and of the rents and profits of the said premises until the sale thereof, UPON the trusts and with and subject to the powers and provisions hereinafter declared and contained of and concerning the same.

2. For the consideration aforesaid the said A. B. hereby covenants with the trustees that he the said A. B. will, at the request of the trustees and at the cost of the trust estate [assign (a) the leasehold property described in the second part of the first schedule hereto unto the trustees for the unexpired residue of the several terms of years subsisting therein respectively, subject to the rents and lessee's covenants reserved by and contained in the leases thereof respectively, AND ALSO will, at the like request and cost], transfer or cause to be transferred the stocks and shares mentioned in the same second part of the said first schedule hereto into the names of the trustees: AND will in the meantime stand seised and possessed of the said [leasehold property] stocks and shares and the [rents, profits] dividends and income thereof, IN TRUST for the trustees, their executors, administrators and assigns, to the intent that the said [leasehold property] stocks and shares shall be sold by the

(a) Where the lease contains onerous covenants the debtor should covenant to assign it, instead of making an actual assignment.

trustees at such time or times and in such manner as they may think fit, and that the moneys to arise from such sale after payment thereof of the costs and expenses incidental thereto, and the [rents, profits] dividends and income thereof until such sale, shall be held and applied by the trustees UPON the trusts and with and subject to the powers and provisions hereinafter declared and contained concerning the same.

TRUSTS FOR
BENEFIT OF
CREDITORS.

3. For the consideration aforesaid the said A. B., as beneficial owner, hereby assigns unto the trustees ALL the property described in the third part of the first schedule hereto, except what is comprised in the fourth part of the said schedule, To HOLD the same unto the trustees UPON TRUST that the trustees shall sell, call in and convert into money the same at such time or times and in such manner as they shall think fit, and shall stand possessed of the moneys to arise from such sale, calling in and conversion, UPON the trusts and with and subject to the powers and provisions hereinafter declared and contained concerning the same.

Debtor assigns
personal pro-
perty to trus-
tees in trust
to sell and
convert.

4. THE trustees may postpone the sale and conversion of all or any part of the property mentioned in Articles 1, 2, and 3 respectively for so long as they think fit, and may manage any freehold or leasehold property remaining unsold, with liberty to expend money in repairs, insurance against fire, and other outgoings and expenses incidental to the management thereof, and may carry on and manage the business of the said A. B., and may employ the said A. B. in or about the management and winding up of the same, and may pay to him any reasonable remuneration for so doing.

Power to post-
pone sale and
conversion,
and to manage
property in
meantime.

5. THE trustees shall apply all the moneys to arise from any such sale or sales as aforesaid, and all other moneys received by them under these presents or the said indentures bearing even date herewith, in manner following (that is to say): They shall in the first place pay thereout all costs, charges, and expenses of and incidental to the preparation and execution of these presents and the said indentures, and the negotiations for the arrangement intended to be hereby carried into effect, and of and incidental to the execution of the trusts and powers of these presents and the said indentures; and shall in the next place, &c. (*pay preferential debts and divide residue, as in Precedent No. 1, Article 2, p. 732*).

Trusts of
proceeds.

TRUSTS FOR
BENEFIT OF
CREDITORS.

(The rest of this Precedent will be the same as Precedent No. 1, Article 2, to the end, p. 735.)

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

The First Part (*freeholds and leaseholds comprised in deeds of even date*).

The Second Part (*onerous leaseholds and stocks and shares in companies*).

The Third Part (*other personal estate included in assignment*).

The Fourth Part (*property excluded*).

THE SECOND SCHEDULE ABOVE REFERRED TO.

(Names of creditors and amounts of debts.)

No. V.

BY DEBTOR
AND SURETIES
TO PAY
COMPOSITION
TO TRUSTEES.

COVENANT by DEBTOR and two SURETIES to pay a COMPOSITION of TEN SHILLINGS in the POUND to a TRUSTEE for the CREDITORS, and RELEASE of DEBTOR (a).

Parties.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*debtor*), of the first part; C. D., of, &c. and E. F., of, &c. (*sureties*), of the second part; G. H., of, &c. (*trustee*), of the third part, and the several persons and firms creditors of the said A. B., who or whose attornies or agents on their behalf execute or otherwise accede to these presents, of the fourth part: WHEREAS the said A. B. is indebted to the parties

Recital that
debtor is

(a) If the composition is made payable through a trustee a rateable division among the creditors without any preference or priority is secured.

hereto of the fourth part in the sums set opposite to their names in the schedule hereto: AND WHEREAS it has been agreed between the said A. B. and his creditors that the creditors shall accept a composition of ten shillings in the pound on their respective debts, to be paid by instalments, and to be secured by the joint and several covenants [*or promissory notes*] of the said A. B., and of the said C. D. and E. F. as his sureties, and that the said G. H. shall be the trustee for receiving and distributing the said composition: NOW THIS INDENTURE WITNESSETH as follows:—

BY DEBTOR
AND SURETIES
TO PAY
COMPOSITION
TO TRUSTEES.

indebted and
of agreement
for composi-
tion.

1. IN consideration of the release hereinafter contained, the said A. B., C. D., and E. F. hereby jointly and severally covenant with the said G. H. (hereinafter called "the trustee") (*b*), to pay to him, by three equal instalments, on the — day of —, the — day of —, and the — day of —, a sum of money sufficient to provide a composition of ten shillings in the pound on all the debts owing from the said A. B. to his creditors (subject, as regards secured debts, to the provision relating thereto hereinafter contained), to be applied by the trustee in the payment of such composition accordingly: AND ALSO to pay to the trustee on demand a further sum of money sufficient to meet all costs and expenses incurred by the trustee in or about or in connection with this arrangement to be applied by the trustee in payment of such costs and expenses accordingly.

Covenant by
debtor and
sureties to pay
composition.

2. IN consideration of the foregoing covenant the parties hereto of the fourth part hereby release the said A. B. from all debts, claims, and demands whatsoever, subject to the provisions hereinafter contained.

Release of
debtor by
his creditors.

3. NOTHING herein contained shall prejudice any right or remedy which any creditor may have against any person other than the said A. B., nor prejudice or affect any mortgage, lien, or security which any creditor may have on any property or effects of the said A. B., or of any other person, but a creditor holding any mortgage, lien, or security on any property of the said A. B., shall be entitled to receive the composition hereby provided in respect only of the amount of the debt owing to him after realizing or giving credit for the value of such mortgage, lien, or security, in like manner as he would have had to

Provisions of
this deed not
to prejudice
any mortgage
or other secu-
rity of
creditors.

(*b*) See note (*a*), *ante*, p. 740.

BY DEBTOR
AND SURETIES
TO PAY
COMPOSITION
TO TRUSTEES.

realize or give credit for the same in order to obtain a dividend
in case of bankruptcy.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

(Names of creditors and amounts of their debts.)

No. VI.

TO PAY
COMPOSITION
TO CREDITORS.

COVENANT *by a DEBTOR and his SURETY to pay a Com-
POSITION to CREDITORS without the intervention of a
TRUSTEE.*

Parties.

Recital that
debtor is
indebted

and agree-
ment for
composition.

Witnessing
part.

Debtor and
surety cove-
nant to pay
to creditors
composition,

or to deliver
joint and
several pro-
missory notes

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*debtor*), of the first part; C. D., of, &c. (*surety*), of the second part, and the several persons and firms, being creditors of the said A. B., who or whose attornies or agents execute these presents, of the third part: WHEREAS the said A. B. is indebted to the parties hereto of the third part in the sums set opposite to their names in the schedule hereto: AND WHEREAS it has been agreed that the said parties hereto of the third part shall accept a composition of 10s. in the £, payable by two equal instalments, and to be secured by the joint and several covenants of the said A. B., and the said C. D. as his surety, in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the release hereinafter contained, the said A. B. and C. D. hereby jointly and severally covenant with the several creditors of the said A. B., parties hereto of the third part respectively, to pay to them respectively a sum equal to 5s. in the £ on their respective debts, on the — day of — next, and a further sum of money equal to 5s. in the £ on their respective debts on the — day of — next [*or to deliver to them respectively the joint and several promissory notes of them, the said A. B. and C. D., for the payment to each such creditor of a sum of money*

equal to 5s. in the £ on the debt owing to that creditor, on the — day of — next, and of a further sum of money equal to 5s. in the £ on the same debt on the — day of — next].
2 and 3. (*As in last Precedent.*)

TO PAY
COMPOSITION
TO CREDITORS.
for compo-
sition.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. VII.

RELEASE by CREDITORS on receiving PROMISSORY NOTES
for a COMPOSITION on their DEBTS from the DEBTOR
and a SURETY.

RELEASE BY
CREDITORS.

THIS INDENTURE, made the — day of —, BETWEEN the several persons and firms whose hands and seals are hereunto subscribed and affixed, being creditors of A. B., of, &c., of the first part, and the said A. B., of the second part: WHEREAS at a meeting lately held of the creditors of the said A. B. it was agreed that the creditors should accept a composition of ten shillings in the pound on their respective debts, payable by two equal instalments on the — day of — and the — day of —, to be secured by the joint and several promissory notes of the said A. B., and of C. D., of, &c., as his surety: AND it was also agreed that as regards any debt secured by any mortgage or charge upon any property of the said A. B., the security should be valued and the creditor should be entitled to the composition in respect only of the balance of the debt over and above the value of the security: AND WHEREAS the names of the several creditors parties hereto of the first part, the amounts of their respective debts, and, in the case of secured debts, the amount at which the securities for the same have been valued, are respectively set forth in the schedule hereto: AND WHEREAS in pursuance of the aforesaid agreement the said A. B. and C. D. have delivered to the creditors,

Parties.

Recital of
agreement for
composition.

That promissory notes of debtor and

ARRANGEMENTS WITH CREDITORS.

**RELEASE BY
CREDITORS.**

surety have
been given
to all the
creditors.

Witnessing
part.

Release by
creditors.

Release not to
affect rights
against
sureties, &c.

parties hereto of the first part respectively, joint and several promissory notes for the payment to them on the — day of — next of sums of money equal to five shillings in the pound, and on the — day of — next of sums of money equal to five shillings more in the pound on their respective debts, or, in the case of secured debts, on the balance of those debts respectively after deducting the value of the securities for the same, as they the said creditors hereby acknowledge: NOW THIS INDENTURE WITNESSETH, that in consideration of the delivery to them of the said promissory notes, the said several creditors, parties hereto of the first part, do hereby respectively release the said A. B. from all debts, claims, and demands whatsoever: PROVIDED ALWAYS, that this release shall not prejudice any right or remedy which any creditor may have against any person other than the said A. B. for any debt hereby expressed to be released; and any creditor having a mortgage or charge on any property of the said A. B. shall be entitled to enforce the same for the amount stated to be the value thereof in the third column of the schedule hereto and no more.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

Name of Creditor.	Amount of Debt.	Value of Security, if any.

No. VIII.

DEED of COVENANT by a DEBTOR and his SURETY to secure
a COMPOSITION of TEN SHILLINGS in the POUND by
INSTALMENTS, pursuant to section 18 of the BANKRUPTCY
Act, 1883 (a).

COMPOSITION
UNDER
BANKRUPTCY
ACT.

THIS INDENTURE, made the — day of —, BETWEEN Parties.

A. B., of, &c. (*debtor*), of the first part; C. D., of, &c. (*surety*), of the second part, and E. F., of, &c. (*trustee*), of the third part: WHEREAS a bankruptcy petition against the said A. B. was lately presented to the High Court of Justice [or the County Court of —], and by an order of the said Court, made upon such petition on the — day of —, 18—, the official receiver of the Court was constituted receiver of the estate of the said A. B.: AND WHEREAS a composition in satisfaction of the debts owing from the said A. B. in the terms set forth in the schedule hereto, has been duly accepted and approved by the creditors, and has been sanctioned by the said Court: AND WHEREAS it is one of the terms of the composition that the payment thereof shall be guaranteed by the said C. D. as surety, and that the said E. F. shall be the trustee to receive and distribute the same: NOW THIS INDENTURE WITNESSETH, that in consideration of the premises the said A. B. and C. D. hereby jointly and severally covenant with the said E. F., as such trustee as aforesaid, that they the said A. B. and C. D., or one of them, will duly pay all moneys from time to time payable by the debtor according to the terms of the composition set forth in the schedule hereto as and when the same respectively shall become payable.

Recite bankruptcy petition and order appointing receiver.

That a composition has been accepted and approved by Court, to be guaranteed by a surety.

Witnessing part.
Joint and several covenants by debtor and surety with trustee to pay composition.

IN WITNESS, &c.

(a) In the above Precedent it is supposed that the creditors are willing to accept the personal security of the debtor and a surety without a *cessio bonorum*. If there had been no surety, the resolution of the creditors embodying the terms of the composition, and the order of the Court approving it, would have been sufficient, but a separate instrument is necessary to bind the surety. See *Ex parte Mirabita*, L. R. 20 Eq. 772.

COMPOSITION
UNDER
BANKRUPTCY
ACT.

THE SCHEDULE ABOVE REFERRED TO.

Terms of Composition.

Terms of
composition.
Preferential
debts to be
paid first.

A composition
of 10s. in the
£ to be paid on
other debts by
instalments.

Costs to be
paid by
debtor.

What shall be
deemed debts.

Provision as
to secured
creditors.

Surety.
Trustee.

1. THE debtor is to pay in full and in priority to all others those debts which under the Bankruptcy Act, 1883, are directed to be so paid in the distribution of the property of a bankrupt (b).

2. THE debtor is to pay a composition of ten shillings in the pound on all his debts (other than such preferential debts as aforesaid) in satisfaction of such debts, by three equal instalments at the times following (*state the days on which the instalments are to be paid*).

3. THE debtor is to pay all the costs, charges, and expenses incurred in and about the proceedings in bankruptcy, including the costs of and incident to this composition.

4. ALL debts provable in bankruptcy shall be deemed debts for the purpose of this composition, and the composition shall be payable in respect of such amount as would have been so provable.

5. NOTHING herein contained shall prejudice any right or remedy which any creditor may have against any other person than the said A. B., nor prejudice or affect any mortgage, lien, or security which any creditor may have on any property or effects of the said A. B., or of any other person; but a creditor holding any such mortgage, lien, or security, shall be entitled to receive the said composition in respect only of the amount of the debts owing to him after realising or giving credit for the value of such mortgage, lien, or security, in like manner as he would have had to realise or give credit for the same in order to obtain a dividend in case of bankruptcy.

6. THE composition is to be guaranteed by C. D. as surety.

7. E. F. is to be the trustee to receive and distribute the composition, and he or any future trustee may be removed, and on the death or removal of a trustee the vacancy may be filled up in the manner provided in sections 86 and 87 of the said Act.

(b) See sect. 40.

APPENDIX.

VENDOR AND PURCHASER ACT, 1874.

37 & 38 VICT. c. 78.

An Act to Amend the Law of Vendor and Purchaser, and further to simplify Title to Land. [7th August, 1874.] 37 & 38 VICT.
c. 78.

WHEREAS it is expedient to facilitate the transfer of land by means of certain amendments in the law of vendor and purchaser :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. In the completion of any contract of sale of land made after the thirty-first day of December, one thousand eight hundred and seventy-four, and subject to any stipulation to the contrary in the contract, forty years shall be substituted as the period of commencement of title which a purchaser may require in place of sixty years, the present period of such commencement; nevertheless earlier title than forty years may be required in cases similar to those in which earlier title than sixty years may now be required.

Forty years substituted for sixty years as the root of title.

2. In the completion of any such contract as aforesaid, and subject to any stipulation to the contrary in the contract, the obligations and rights of vendor and purchaser shall be regulated by the following rules; that is to say,

Rules for regulating obligations and rights of vendor and purchaser.

First. Under a contract to grant or assign a term of years, whether derived or to be derived out of a freehold or leasehold estate, the intended lessee or assign shall not be entitled to call for the title to the freehold.

Second. Recitals, statements, and descriptions of facts, matters, and parties contained in deeds, instruments, Acts of Parliament, or statutory declarations, twenty years old at the date of the contract, shall, unless and except so far as they shall be proved to be inaccurate, be taken to be

37 & 38 Vict.
c. 78.

sufficient evidence of the truth of such facts, matters, and descriptions.

Third. The inability of the vendor to furnish the purchaser with a legal covenant to produce and furnish copies of documents of title shall not be an objection to title in case the purchaser will, on the completion of the contract, have an equitable right to the production of such documents.

Fourth. Such covenants for production as the purchaser can and shall require shall be furnished at his expense, and the vendor shall bear the expense of perusal and execution on behalf of and by himself, and on behalf of and by necessary parties other than the purchaser.

Fifth. Where the vendor retains any part of an estate to which any documents of title relate he shall be entitled to retain such documents.

Trustees may
sell, &c., not-
withstanding
rules.

3. Trustees who are either vendors or purchasers may sell or buy without excluding the application of the second section of this Act.

Legal per-
sonal repre-
sentative
authorised to
convey legal
estate of mort-
gaged prop-
erty.

[4. The legal personal representative of a mortgagee of a freehold estate or of a copyhold estate to which the mortgagee shall have been admitted may on payment of all sums secured by the mortgage convey or surrender the mortgaged estate whether the mortgage be in form an assurance subject to redemption or an assurance upon trust (a).]

Bare legal
estate.

[5. Upon the death of a bare trustee of any corporeal or incorporeal hereditament of which such trustee was seised in fee simple such hereditament shall vest like a chattel real in the legal or personal representative from time to time of such trustee (b).]

Devolution of
trust and
mortgage
estates on
death, under
Conveyancing
Act.

(a) This section was repealed by the Conveyancing Act, 1881, s. 30, sub-s. 2, as to cases of death occurring after 31 Dec. 1881.

(b) This section was repealed as to cases occurring after 31 Dec. 1875, by the Land Transfer Act, 1875, s. 48, which instead thereof enacted as to any corporeal or incorporeal hereditament of which such trustee was seised in fee simple, that such hereditament should vest like a chattel real in the legal personal representative from time to time of such trustee; and by the Conveyancing Act, 1881, s. 30, the above 48th section of the Land Transfer Act, 1875, is repealed as to cases of death occurring after 31 Dec. 1881; and in cases of death after that date, estates vested in any person solely on any trust or by way of mortgage, vest in his personal representative or representatives.

6. When any freehold or copyhold hereditaments shall be vested in a married woman as a bare trustee, she may convey or surrender the same as if she were a feme sole.

37 & 38 VICT.
c. 78.

Married woman being trustee may convey.

7. (*Repealed.*) (c)

8. Where the will of a testator devising land in Middlesex or Yorkshire has not been registered within the period allowed by law in that behalf, an assurance of such land to a purchaser or mortgagee by the devisee or by some one deriving title under him shall, if registered before, take precedence of and prevail over any assurance from the testator's heir-at-law.

Non-regis-
tration of will
in Middlesex
or Yorkshire,
&c., cured in
certain cases.

9. A vendor or purchaser of real or leasehold estate in England, or their representatives respectively, may at any time or times and from time to time apply in a summary way to a judge of the Court of Chancery in England in chambers, in respect of any requisitions or objections, or any claim for compensation, or any other question arising out of or connected with the contract (not being a question affecting the existence or validity of the contract), and the judge shall make such order upon the application as to him shall appear just, and shall order how and by whom all or any of the costs of and incident to the application shall be borne and paid.

Vendor or
purchaser may
obtain decision
of judge in
chambers as to
requisitions or
objections, or
compensation,
&c.

A vendor or purchaser of real or leasehold estate in Ireland, or their representatives respectively, may in like manner and for the same purpose apply to a judge of the Court of Chancery in Ireland, and the judge shall make such order upon the application as to him shall appear just, and shall order how and by whom all or any of the costs of and incident to the application shall be borne and paid.

10. This Act shall not apply to Scotland, and may be cited as the Vendor and Purchaser Act, 1874.

Extent of Act.

(c) This section, which relates to priority and protection by legal estates and tacking, was repealed retrospectively by the 73rd section of the Conveyancing Act, 1881.

CONVEYANCING AND LAW OF PROPERTY ACT, 1881.

44 & 45 VICT. c. 41.

44 & 45 VICT.
c. 41.

An Act for simplifying and improving the practice of Conveyancing ; and for resting in Trustees, Mortgagees, and others various powers commonly conferred by provisions inserted in Settlements, Mortgages, Wills, and other Instruments ; and for amending in various particulars the Law of Property ; and for other purposes. [22nd August, 1881.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

I.—PRELIMINARY.

PRELIMINARY.

Short title ;
commence-
ment ; extent.

1.—(1.) This Act may be cited as the Conveyancing and Law of Property Act, 1881.

(2.) This Act shall commence and take effect from and immediately after the thirty-first day of December one thousand eight hundred and eighty-one.

(3.) This Act does not extend to Scotland.

Interpretation
of property,
land, &c.

2. In this Act—

(i.) Property, unless a contrary intention appears, includes real and personal property, and any estate or interest in any property, real or personal, and any debt, and any thing in action, and any other right or interest :

(ii.) Land, unless a contrary intention appears, includes land of any tenure, and tenements and hereditaments, corporeal or

incorporeal, and houses and other buildings, also an undivided share in land : 44 & 45 Vict.
c. 41.

(iii.) In relation to land, income includes rents and profits, and possession includes receipt of income :

(iv.) Manor includes lordship, and reputed manor or lordship :

(v.) Conveyance, unless a contrary intention appears, includes assignment, appointment, lease, settlement, and other assurance, and covenant to surrender, made by deed, on a sale, mortgage, demise, or settlement of any property, or on any other dealing with or for any property ; and convey, unless a contrary intention appears, has a meaning corresponding with that of conveyance :

(vi.) Mortgage includes any charge on any property for securing money or money's worth ; and mortgage money means money, or money's worth, secured by a mortgage ; and mortgagor includes any person from time to time deriving title under the original mortgagor, or entitled to redeem a mortgage, according to his estate, interest, or right, in the mortgaged property ; and mortgagee includes any person from time to time deriving title under the original mortgagee ; and mortgagee in possession is, for the purposes of this Act, a mortgagee who, in right of the mortgage, has entered into and is in possession of the mortgaged property :

(vii.) Incumbrance includes a mortgage in fee, or for a less estate, and a trust for securing money, and a lien, and a charge of a portion, annuity, or other capital or annual sum ; and incumbrancer has a meaning corresponding with that of incumbrance, and includes every person entitled to the benefit of an incumbrance, or to require payment or discharge thereof :

(viii.) Purchaser, unless a contrary intention appears, includes a lessee or mortgagee, and an intending purchaser, lessee, or mortgagee, or other person, who, for valuable consideration, takes or deals for any property ; and purchase, unless a contrary intention appears, has a meaning corresponding with that of purchaser ; but sale means only a sale properly so called :

(ix.) Rent includes yearly or other rent, toll, duty, royalty, or other reservation, by the acre, the ton, or otherwise ; and fine includes premium or fore-gift, and any payment, consideration, or benefit in the nature of a fine, premium, or fore-gift :

44 & 45 VICT.
c. 41.

(x.) Building purposes include the erecting and the improving of, and the adding to, and the repairing of buildings; and a building lease is a lease for building purposes or purposes connected therewith :

(xi.) A mining lease is a lease for mining purposes, that is, the searching for, winning, working, getting, making merchantable, carrying away, or disposing of mines and minerals, or purposes connected therewith, and includes a grant or licence for mining purposes :

(xii.) Will includes codicil :

(xiii.) Instrument includes deed, will, inclosure award, and Act of Parliament :

(xiv.) Securities include stocks, funds, and shares :

(xv.) Bankruptcy includes liquidation by arrangement, and any other act or proceeding in law having, under any Act for the time being in force, effects or results similar to those of bankruptcy; and bankrupt has a meaning corresponding with that of bankruptcy :

(xvi.) Writing includes print; and words referring to any instrument, copy, extract, abstract, or other document include any such instrument, copy, extract, abstract, or other document being in writing, or in print, or partly in writing and partly in print :

(xvii.) Person includes a corporation :

(xviii.) Her Majesty's High Court of Justice is referred to as the Court.

SALES AND
OTHER
TRANSACTIONS.

II.—SALES AND OTHER TRANSACTIONS.

Contracts for Sale.

*Contracts for
Sale.*
Application of
stated condi-
tions of sale to
all purchases.

3.—(1.) Under a contract to sell and assign a term of years derived out of a leasehold interest in land, the intended assign shall not have the right to call for the title to the leasehold reversion.

(2.) Where land of copyhold or customary tenure has been converted into freehold by enfranchisement, then, under a contract to sell and convey the freehold, the purchaser shall not have the right to call for the title to make the enfranchisement.

(3.) A purchaser of any property shall not require the pro-

duction, or any abstract or copy, of any deed, will, or other document, dated or made before the time prescribed by law, or stipulated, for commencement of the title, even though the same creates a power subsequently exercised by an instrument abstracted in the abstract furnished to the purchaser; nor shall he require any information, or make any requisition, objection, or inquiry, with respect to any such deed, will, or document, or the title prior to that time, notwithstanding that any such deed, will, or other document, or that prior title, is recited, covenanted to be produced, or noticed; and he shall assume, unless the contrary appears, that the recitals contained in the abstracted instruments of any deed, will, or other document forming part of that prior title are correct, and give all the material contents of the deed, will, or other document so recited, and that every document so recited was duly executed by all necessary parties, and perfected, if and as required, by fine, recovery, acknowledgment, enrolment, or otherwise.

44 & 45 VICT.
C. 41.

*Contracts for
Sale.*

(4.) Where land sold is held by lease (not including under-lease), the purchaser shall assume, unless the contrary appears, that the lease was duly granted; and, on production of the receipt for the last payment due for rent under the lease before the date of actual completion of the purchase, he shall assume, unless the contrary appears, that all the covenants and provisions of the lease have been duly performed and observed up to the date of actual completion of the purchase.

(5.) Where land sold is held by under-lease, the purchaser shall assume, unless the contrary appears, that the under-lease and every superior lease were duly granted; and, on production of the receipt for the last payment due for rent under the under-lease before the date of actual completion of the purchase, he shall assume, unless the contrary appears, that all the covenants and provisions of the under-lease have been duly performed and observed up to the date of actual completion of the purchase, and further that all rent due under every superior lease, and all the covenants and provisions of every superior lease, have been paid and duly performed and observed up to that date.

(6.) On the sale of any property, the expenses of the production and inspection of all Acts of Parliament, inclosure awards, records, proceedings of courts, court rolls, deeds, wills, probates, letters of administration, and other documents, not in the

44 & 45 VICT.
c. 41.

*Contracts for
Sale.*

vendor's possession, and the expenses of all journeys incidental to such production or inspection, and the expenses of searching for, procuring, making, verifying, and producing all certificates, declarations, evidences, and information not in the vendor's possession, and all attested, stamped, office, or other copies or abstracts of, or extracts from, any Acts of Parliament or other documents aforesaid, not in the vendor's possession, if any such production, inspection, journey, search, procuring, making, or verifying is required by a purchaser, either for verification of the abstract, or for any other purpose, shall be borne by the purchaser who requires the same; and where the vendor retains possession of any document, the expenses of making any copy thereof, attested or unattested, which a purchaser requires to be delivered to him, shall be borne by that purchaser.

(7.) On a sale of any property in lots, a purchaser of two or more lots, held wholly or partly under the same title, shall not have a right to more than one abstract of the common title, except at his own expense.

(8.) This section applies only to titles and purchasers on sales properly so called, notwithstanding any interpretation in this Act.

(9.) This section applies only if and as far as a contrary intention is not expressed in the contract of sale, and shall have effect subject to the terms of the contract and to the provisions therein contained.

(10.) This section applies only to sales made after the commencement of this Act.

(11.) Nothing in this section shall be construed as binding a purchaser to complete his purchase in any case where, on a contract made independently of this section, and containing stipulations similar to the provisions of this section, or any of them, specific performance of the contract would not be enforced against him by the Court.

Completion of
contract after
death.

4.—(1.) Where at the death of any person there is subsisting a contract enforceable against his heir or devisee, for the sale of the fee simple or other freehold interest, descendible to his heirs general, in any land, his personal representatives shall, by virtue of this Act, have power to convey the land for all the estate and interest vested in him at his death, in any manner proper for giving effect to the contract.

(2.) A conveyance made under this section shall not affect the beneficial rights of any person claiming under any testamentary disposition or as heir or next of kin of a testator or intestate.

44 & 45 VICT.
c. 41.

*Contracts for
Sale.*

(3.) This section applies only in cases of death after the commencement of this Act.

Discharge of Incumbrances on Sale.

5.—(1.) Where land subject to any incumbrance, whether immediately payable or not, is sold by the Court, or out of Court, the Court may, if it thinks fit, on the application of any party to the sale, direct or allow payment into Court, in case of an annual sum charged on the land, or of a capital sum charged on a determinable interest in the land, of such amount as, when invested in Government securities, the Court considers will be sufficient, by means of the dividends thereof, to keep down or otherwise provide for that charge, and in any other case of capital money charged on the land, of the amount sufficient to meet the incumbrance and any interest due thereon; but in either case there shall also be paid into Court such additional amount as the Court considers will be sufficient to meet the contingency of further costs, expenses, and interest, and any other contingency, except depreciation of investments, not exceeding one-tenth part of the original amount to be paid in, unless the Court for special reason thinks fit to require a larger additional amount.

*Discharge of
Incumbrances
on Sale.*

*Provision by
Court for in-
cumbrances,
and sale freed
therefrom.*

(2.) Thereupon, the Court may, if it thinks fit, and either after or without any notice to the incumbrancer, as the Court thinks fit, declare the land to be freed from the incumbrance, and make any order for conveyance, or vesting order, proper for giving effect to the sale, and give directions for the retention and investment of the money in Court.

(3.) After notice served on the persons interested in or entitled to the money or fund in Court, the Court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof.

(4.) This section applies to sales not completed at the commencement of this Act, and to sales thereafter made.

44 & 45 Vict.
c. 41.

*General
Words.*

General words
in conveyances
of land, build-
ings, or manor.

General Words.

6.—(1.) A conveyance of land shall be deemed to include and shall by virtue of this Act operate to convey, with the land, all buildings, erections, fixtures, commons, hedges, ditches, fences, ways, waters, watercourses, liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land, or any part thereof, or at the time of conveyance demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to the land or any part thereof.

(2.) A conveyance of land, having houses or other buildings thereon, shall be deemed to include and shall by virtue of this Act operate to convey, with the land, houses, or other buildings, all outhouses, erections, fixtures, cellars, areas, courts, court-yards, cisterns, sewers, gutters, drains, ways, passages, lights, watercourses, liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land, houses, or other buildings conveyed, or any of them, or any part thereof, or at the time of conveyance demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to, the land, houses, or other buildings conveyed, or any of them, or any part thereof.

(3.) A conveyance of a manor shall be deemed to include and shall by virtue of this Act operate to convey, with the manor, all pastures, feedings, wastes, warrens, commons, mines, minerals, quarries, furzes, trees, woods, underwoods, coppices, and the ground and soil thereof, fishings, fisheries, fowlings, courts leet, courts baron, and other courts, view of frankpledge, and all that to view of frankpledge doth belong, mills, mulctures, customs, tolls, duties, reliefs, heriots, fines, sums of money, amerciements, waifs, estrays, chief-rents, quit-rents, rents-charge, rents seck, rents of assize, fee farm rents, services, royalties, jurisdictions, franchises, liberties, privileges, easements, profits, advantages, rights, emoluments, and hereditaments whatsoever, to the manor appertaining, or reputed to appertain, or at the time of conveyance demised, occupied, or enjoyed with the same, or reputed or known as part, parcel, or member thereof.

(4.) This section applies only if and as far as a contrary intention is not expressed in the conveyance, and shall have effect

subject to the terms of the conveyance and to the provisions therein contained. 44 & 45 Vict.
c. 41.

(5.) This section shall not be construed as giving to any person a better title to any property, right, or thing in this section mentioned, than the title which the conveyance gives to him to the land or manor expressed to be conveyed, or as conveying to him any property, right, or thing in this section mentioned, further or otherwise than as the same could have been conveyed to him by the conveying parties.

*General
Words.*

(6.) This section applies only to conveyances made after the commencement of this Act.

Covenants for Title.

*Covenants for
Title.*

7.—(1.) In a conveyance there shall, in the several cases in this section mentioned, be deemed to be included, and there shall in those several cases, by virtue of this Act, be implied, a covenant to the effect in this section stated, by the person or by each person who conveys, as far as regards the subject-matter or share of subject-matter expressed to be conveyed by him, with the person, if one, to whom the conveyance is made, or with the persons jointly, if more than one, to whom the conveyance is made as joint tenants, or with each of the persons, if more than one, to whom the conveyance is made as tenants in common, that is to say :

Covenants for
title to be
implied.

(A.) In a conveyance for valuable consideration, other than a mortgage, the following covenant by a person who conveys and is expressed to convey as beneficial owner (namely) :

On conveyance
for value, by
beneficial
owner.

That, notwithstanding anything by the person who so conveys, or any one through whom he derives title, otherwise than by purchase for value, made, done, executed, or omitted, or knowingly suffered, the person who so conveys has, with the concurrence of every other person, if any, conveying by his direction, full power to convey the subject-matter expressed to be conveyed, subject as, if so expressed, and in the manner in which it is expressed to be conveyed, and that, notwithstanding anything as aforesaid, that subject-matter shall remain to and be quietly entered upon, received, and held, occupied, enjoyed, and taken, by the person to whom the conveyance is expressed

Right to
convey.

Quiet enjoy-
ment.

44 & 45 Vict.
c. 41.

*Covenants for
Title.*

Freedom from
incumbrance.

Further
assurance.

to be made, and any person deriving title under him, and the benefit thereof shall be received and taken accordingly, without any lawful interruption or disturbance by the person who so conveys, or any person conveying by his direction, or rightfully claiming or to claim by, through, under, or in trust for the person who so conveys, or any person conveying by his direction, or by, through, or under any one not being a person claiming in respect of an estate or interest subject whereto the conveyance is expressly made, through whom the person who so conveys derives title, otherwise than by purchase for value; and that, freed and discharged from, or otherwise by the person who so conveys, sufficiently indemnified against, all such estates, incumbrances, claims, and demands other than those subject to which the conveyance is expressly made, as either before or after the date of the conveyance have been or shall be made, occasioned or suffered by that person or by any person conveying by his direction, or by any person rightfully claiming by, through, under, or in trust for the person who so conveys, or by, through, or under any person conveying by his direction, or by, through, or under any one through whom the person who so conveys derives title, otherwise than by purchase for value; and further, that the person who so conveys, and any person conveying by his direction, and every other person having or rightfully claiming any estate or interest in the subject-matter of conveyance, other than an estate or interest subject whereto the conveyance is expressly made by, through, under, or in trust for the person who so conveys, or by, through, or under any person conveying by his direction, or by, through, or under any one through whom the person who so conveys derives title, otherwise than by purchase for value, will, from time to time and at all times after the date of the conveyance, on the request and at the cost of any person to whom the conveyance is expressed to be made, or of any person deriving title under him, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of the conveyance to the person to whom the conveyance is made, and to those deriving title under him, subject as, if so

expressed, and in the manner in which the conveyance is expressed to be made, as by him or them or any of them, shall be reasonably required :

44 & 45 VICT.
c. 41.

*Covenants for
Title.*

(in which covenant a purchase for value shall not be deemed to include a conveyance in consideration of marriage) :

(B.) In a conveyance of leasehold property for valuable consideration, other than a mortgage, the following further covenant by a person who conveys and is expressed to convey as beneficial owner (namely) :

On conveyance
of leaseholds
for value, by
beneficial
owner.

That, notwithstanding anything by the person who so conveys, or any one through whom he derives title otherwise than by purchase for value, made, done, executed, or omitted, or knowingly suffered, the lease or grant creating the term or estate for which the land is conveyed is, at the time of conveyance, a good, valid, and effectual lease or grant of the property conveyed, and is in full force, unforfeited, unsurrendered, and in nowise become void or voidable, and that, notwithstanding anything as aforesaid, all the rents reserved by, and all the covenants, conditions, and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed, and performed, have been paid, observed, and performed up to the time of conveyance :

Validity of
lease.

(in which covenant a purchase for value shall not be deemed to include a conveyance in consideration of marriage) :

(C.) In a conveyance by way of mortgage, the following covenant by a person who conveys and is expressed to convey as beneficial owner (namely) :

On mortgage
by beneficial
owner.

That the person who so conveys has, with the concurrence of every other person, if any, conveying by his direction, full power to convey the subject-matter expressed to be conveyed by him, subject as, if so expressed, and in the manner in which it is expressed to be conveyed ; and also that, if default is made in payment of the money intended to be secured by the conveyance, or any interest thereon, or any part of that money or interest, contrary to any provision in the conveyance, it shall be lawful for the person to whom the conveyance is expressed to be made, and the persons deriving title under him, to enter into and upon,

Right to
convey.

44 & 45 Vic.
c. 41.

*Covenants for
Title.*

Quiet enjoy-
ment.

Freedom from
incumbrance.

Further
assurance.

or receive, and thenceforth quietly hold, occupy, and enjoy or take and have, the subject-matter expressed to be conveyed, or any part thereof, without any lawful interruption or disturbance by the person who so conveys, or any person conveying by his direction, or any other person not being a person claiming in respect of an estate or interest subject whereto the conveyance is expressly made; and that, freed and discharged from, or otherwise by the person who so conveys sufficiently indemnified against, all estates, incumbrances, claims, and demands whatever, other than those subject whereto the conveyance is expressly made; and further, that the person who so conveys and every person conveying by his direction, and every person deriving title under any of them, and every other person having or right-fully claiming any estate or interest in the subject-matter of conveyance, or any part thereof, other than an estate or interest subject whereto the conveyance is expressly made, will from time to time and at all times, on the request of any person to whom the conveyance is expressed to be made, or of any person deriving title under him, but, as long as any right of redemption exists under the conveyance, at the cost of the person so conveying, or of those deriving title under him, and afterwards at the cost of the person making the request, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of conveyance and every part thereof to the person to whom the conveyance is made, and to those deriving title under him, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by him or them or any of them shall be reasonably required:

On mortgage
of leaseholds,
by beneficial
owner.

Validity of
lease.

(D.) In a conveyance by way of mortgage of leasehold property, the following further covenant by a person who conveys and is expressed to convey as beneficial owner (namely):

That the lease or grant creating the term or estate for which the land is held is, at the time of conveyance, a good, valid, and effectual lease or grant of the land conveyed and is in full force, unforfeited, and unsurrendered and in nowise become void or voidable, and that all the rents reserved by, and all the covenants, conditions, and agreements contained

in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed, and performed, have been paid, observed, and performed up to the time of conveyance; and also that the person so conveying, or the persons deriving title under him, will at all times, as long as any money remains on the security of the conveyance, pay, observe, and perform, or cause to be paid, observed, and performed all the rents reserved by, and all the covenants, conditions, and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed, and performed, and will keep the person to whom the conveyance is made, and those deriving title under him, indemnified against all actions, proceedings, costs, charges, damages, claims and demands, if any, to be incurred or sustained by him or them by reason of the non-payment of such rent or the non-observance or non-performance of such covenants, conditions, and agreements, or any of them :

44 & 45 Vict.
c. 41.

*Covenants for
Title.*

Payment of
rent and per-
formance of
covenants.

(E.) In a conveyance by way of settlement, the following covenant by a person who conveys and is expressed to convey as settlor (namely) :

On settlement.

That the person so conveying, and every person deriving title under him by deed or act or operation of law in his lifetime subsequent to that conveyance, or by testamentary disposition or devolution in law, on his death, will, from time to time, and at all times, after the date of that conveyance, at the request and cost of any person deriving title thereunder, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of the conveyance to the persons to whom the conveyance is made and those deriving title under them, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by them or any of them shall be reasonably required :

For further
assurance,
limited.

(F.) In any conveyance, the following covenant by every person who conveys and is expressed to convey as trustee or mortgagee, or as personal representative of a deceased person, or as committee of a lunatic so found by inquisition, or under an

On conveyance
by trustee or
mortgagee.

44 & 45 VICT.
C. 41.

*Covenants for
Title.*

Against in-
cumbrances.

order of the Court, which covenant shall be deemed to extend to every such person's own acts (namely) :

That the person so conveying has not executed or done, or knowingly suffered, or been party or privy to, any deed or thing, whereby or by means whereof the subject-matter of the conveyance, or any part thereof, is or may be impeached, charged, affected, or incumbered in title, estate, or otherwise, or whereby or by means whereof the person who so conveys is in anywise hindered from conveying the subject-matter of the conveyance, or any part thereof, in the manner in which it is expressed to be conveyed.

(2.) Where in a conveyance it is expressed that by direction of a person expressed to direct as beneficial owner another person conveys, then, within this section, the person giving the direction, whether he conveys and is expressed to convey as beneficial owner or not, shall be deemed to convey and to be expressed to convey as beneficial owner the subject-matter so conveyed by his direction; and a covenant on his part shall be implied accordingly.

(3.) Where a wife conveys and is expressed to convey as beneficial owner, and the husband also conveys and is expressed to convey as beneficial owner, then, within this section, the wife shall be deemed to convey and to be expressed to convey by direction of the husband, as beneficial owner; and, in addition to the covenant implied on the part of the wife, there shall also be implied, first, a covenant on the part of the husband as the person giving that direction, and secondly, a covenant on the part of the husband in the same terms as the covenant implied on the part of the wife.

(4.) Where in a conveyance a person conveying is not expressed to convey as beneficial owner, or as settlor, or as trustee, or as mortgagee, or as personal representative of a deceased person, or as committee of a lunatic so found by inquisition, or under an order of the Court, or by direction of a person as beneficial owner, no covenant on the part of the person conveying shall be, by virtue of this section, implied in the conveyance.

(5.) In this section a conveyance includes a deed conferring the right to admittance to copyhold or customary land, but does not include a demise by way of lease at a rent, or any customary

assurance, other than a deed, conferring the right to admittance to copyhold or customary land.

44 & 45 VICT.
c. 41.

(6.) The benefit of a covenant implied as aforesaid shall be annexed and incident to, and shall go with, the estate or interest of the implied covenantee, and shall be capable of being enforced by every person in whom that estate or interest is, for the whole or any part thereof, from time to time vested.

*Covenants for
Title.*

(7.) A covenant implied as aforesaid may be varied or extended by deed, and, as so varied or extended, shall, as far as may be, operate in the like manner, and with all the like incidents, effects, and consequences, as if such variations or extensions were directed in this section to be implied.

(8.) This section applies only to conveyances made after the commencement of this Act.

Execution of Purchase Deed.

8.—(1.) On a sale the purchaser shall not be entitled to require that the conveyance to him be executed in his presence, or in that of his solicitor, as such; but shall be entitled to have, at his own cost, the execution of the conveyance attested by some person appointed by him, who may, if he thinks fit, be his solicitor.

*Execution of
Purchase Deed.
Rights of
purchaser as
to execution.*

(2.) This section applies only to sales made after the commencement of this Act.

Production and Safe Custody of Title Deeds.

9.—(1.) Where a person retains possession of documents, and gives to another an acknowledgment in writing of the right of that other to production of those documents, and to delivery of copies thereof (in this section called an acknowledgment), that acknowledgment shall have effect as in this section provided.

*Production and
Safe Custody
of Title Deeds.
Acknowledg-
ment of right
to production,
and under-
taking for safe
custody of
documents.*

(2.) An acknowledgment shall bind the documents to which it relates in the possession or under the control of the person who retains them, and in the possession or under the control of every other person having possession or control thereof from time to time, but shall bind each individual possessor or person as long only as he has possession or control thereof; and every person so having possession or control from time to time shall be bound specifically to perform the obligations imposed under this section

44 & 45 VICT. c. 41. by an acknowledgment, unless prevented from so doing by fire or other inevitable accident.

*Production and
Safe Custody
of Title Deeds.*

(3.) The obligations imposed under this section by an acknowledgment are to be performed from time to time at the request in writing of the person to whom an acknowledgment is given, or of any person, not being a lessee at a rent, having or claiming any estate, interest, or right through or under that person, or otherwise becoming through or under that person interested in or affected by the terms of any document to which the acknowledgment relates.

(4.) The obligations imposed under this section by an acknowledgment are—

(i.) An obligation to produce the documents or any of them at all reasonable times for the purpose of inspection, and of comparison with abstracts or copies thereof, by the person entitled to request production, or by any one by him authorized in writing; and

(ii.) An obligation to produce the documents or any of them at any trial, hearing, or examination in any court, or in the execution of any commission, or elsewhere in the United Kingdom, on any occasion on which production may properly be required, for proving or supporting the title or claim of the person entitled to request production, or for any other purpose relative to that title or claim; and

(iii.) An obligation to deliver to the person entitled to request the same true copies or extracts, attested or unattested, of or from the documents or any of them.

(5.) All costs and expenses of or incidental to the specific performance of any obligation imposed under this section by an acknowledgment shall be paid by the person requesting performance.

(6.) An acknowledgment shall not confer any right to damages for loss or destruction of, or injury to, the documents to which it relates, from whatever cause arising.

(7.) Any person claiming to be entitled to the benefit of an acknowledgment may apply to the Court for an order directing the production of the documents to which it relates, or any of them, or the delivery of copies of or extracts from those documents or any of them to him, or some person on his behalf; and

the Court may, if it thinks fit, order production, or production and delivery, accordingly, and may give directions respecting the time, place, terms, and mode of production or delivery, and may make such order as it thinks fit respecting the costs of the application, or any other matter connected with the application.

44 & 45 VICT.
c. 41.

*Production and
Safe Custody
of Title Deeds.*

(8.) An acknowledgment shall by virtue of this Act satisfy any liability to give a covenant for production and delivery of copies of or extracts from documents.

(9.) Where a person retains possession of documents and gives to another an undertaking in writing for safe custody thereof, that undertaking shall impose on the person giving it, and on every person having possession or control of the documents from time to time, but on each individual possessor or person as long only as he has possession or control thereof, an obligation to keep the documents safe, whole, uncanceled, and undefaced, unless prevented from so doing by fire or other inevitable accident.

(10.) Any person claiming to be entitled to the benefit of such an undertaking may apply to the Court to assess damages for any loss, destruction of, or injury to the documents or any of them, and the Court may, if it thinks fit, direct an inquiry respecting the amount of damages, and order payment thereof by the person liable, and may make such order as it thinks fit respecting the costs of the application, or any other matter connected with the application.

(11.) An undertaking for safe custody of documents shall by virtue of this Act satisfy any liability to give a covenant for safe custody of documents.

(12.) The rights conferred by an acknowledgment or an undertaking under this section shall be in addition to all such other rights relative to the production, or inspection, or the obtaining of copies of documents as are not, by virtue of this Act, satisfied by the giving of the acknowledgment or undertaking, and shall have effect subject to the terms of the acknowledgment or undertaking, and to any provisions therein contained.

(13.) This section applies only if and as far as a contrary intention is not expressed in the acknowledgment or undertaking.

(14.) This section applies only to an acknowledgment or undertaking given, or a liability respecting documents incurred, after the commencement of this Act.

44 & 45 VICT.
c. 41.

LEASES.

Rent and
benefit of
lessee's cove-
nants to run
with reversion.

III.—LEASES.

10.—(1.) Rent reserved by a lease, and the benefit of every covenant or provision therein contained, having reference to the subject-matter thereof, and on the lessee's part to be observed or performed, and every condition of re-entry and other condition therein contained, shall be annexed and incident to and shall go with the reversionary estate in the land, or in any part thereof, immediately expectant on the term granted by the lease, notwithstanding severance of that reversionary estate, and shall be capable of being recovered, received, enforced, and taken advantage of by the person from time to time entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land leased.

(2.) This section applies only to leases made after the commencement of this Act.

Obligation of
lessor's cove-
nants to run
with rever-
sion.

11.—(1.) The obligation of a covenant entered into by a lessor with reference to the subject-matter of the lease shall, if and as far as the lessor has power to bind the reversionary estate immediately expectant on the term granted by the lease, be annexed and incident to and shall go with that reversionary estate, or the several parts thereof, notwithstanding severance of that reversionary estate, and may be taken advantage of and enforced by the person in whom the term is from time to time vested by conveyance, devolution in law, or otherwise; and, if and as far as the lessor has power to bind the person from time to time entitled to that reversionary estate, the obligation aforesaid may be taken advantage of and enforced against any person so entitled.

(2.) This section applies only to leases made after the commencement of this Act.

Apportion-
ment of con-
ditions on
severance, &c.

12.—(1.) Notwithstanding the severance by conveyance, surrender, or otherwise, of the reversionary estate in any land comprised in a lease, and notwithstanding the avoidance or ceaser in any other manner of the term granted by a lease as to part only of the land comprised therein, every condition or right of re-entry, and every other condition contained in the lease, shall be apportioned, and shall remain annexed to the severed parts of

the reversionary estate as severed, and shall be in force with respect to the term whereon each severed part is reversionary, or the term in any land which has not been surrendered, or as to which the term has not been avoided or has not otherwise ceased, in like manner as if the land comprised in each severed part, or the land as to which the term remains subsisting, as the case may be, had alone originally been comprised in the lease.

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c. 41.

(2.) This section applies only to leases made after the commencement of this Act.

13.—(1.) On a contract to grant a lease for a term of years to be derived out of a leasehold interest, with a leasehold reversion, the intended lessee shall not have the right to call for the title to that reversion.

On sub-
demise, title
to leasehold
reversion not
to be required.

(2.) This section applies only if and as far as a contrary intention is not expressed in the contract, and shall have effect subject to the terms of the contract and to the provisions therein contained.

(3.) This section applies only to contracts made after the commencement of this Act.

Forfeiture.

Forfeiture.

14.—(1.) A right of re-entry or forfeiture under any proviso or stipulation in a lease, for a breach of any covenant or condition in the lease, shall not be enforceable, by action or otherwise, unless and until the lessor serves on the lessee a notice specifying the particular breach complained of, and, if the breach is capable of remedy, requiring the lessee to remedy the breach, and, in any case, requiring the lessee to make compensation in money for the breach, and the lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money, to the satisfaction of the lessor, for the breach.

Restrictions on
and relief
against for-
feiture of
leases.

(2.) Where a lessor is proceeding, by action or otherwise, to enforce such a right of re-entry or forfeiture, the lessee may, in the lessor's action, if any, or in any action brought by himself, apply to the Court for relief; and the Court may grant or refuse relief, as the Court, having regard to the proceedings and

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c. 41.

Forfeiture.

conduct of the parties under the foregoing provisions of this section, and to all the other circumstances, thinks fit; and in case of relief may grant it on such terms, if any, as to costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like breach in the future, as the Court, in the circumstances of each case, thinks fit.

(3.) For the purposes of this section, a lease includes an original or derivative under-lease, also a grant at a fee farm rent, or securing a rent by condition; and a lessee includes an original or derivative under-lessee, and the heirs, executors, administrators, and assigns of a lessee, also a grantee under such a grant as aforesaid, his heirs and assigns; and a lessor includes an original or derivative under-lessor, and the heirs, executors, administrators, and assigns of a lessor, also a grantor as aforesaid, and his heirs and assigns.

(4.) This section applies although the proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease in pursuance of the directions of any Act of Parliament.

(5.) For the purposes of this section a lease limited to continue as long only as the lessee abstains from committing a breach of covenant shall be and take effect as a lease to continue for any longer term for which it could subsist, but determinable by a proviso for re-entry on such a breach.

(6.) This section does not extend—

(i.) To a covenant or condition against the assigning, under-letting, parting with the possession, or disposing of the land leased; or to a condition for forfeiture on the bankruptcy of the lessee, or on the taking in execution of the lessee's interest; or

(ii.) In case of a mining lease, to a covenant or condition for allowing the lessor to have access to or inspect books, accounts, records, weighing-machines or other things, or to enter or inspect the mine or the workings thereof.

(7.) The enactments described in Part I. of the Second Schedule to this Act are hereby repealed.

(8.) This section shall not affect the law relating to re-entry or forfeiture or relief in case of non-payment of rent.

(9.) This section applies to leases made either before or after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

44 & 45 VICT.
c. 41.

Forfeiture.

IV.—MORTGAGES.

MORTGAGES.

15.—(1.) Where a mortgagor is entitled to redeem, he shall, by virtue of this Act, have power to require the mortgagee, instead of re-conveying, and on the terms on which he would be bound to re-convey, to assign the mortgage debt and convey the mortgaged property to any third person, as the mortgagor directs; and the mortgagee shall, by virtue of this Act, be bound to assign and convey accordingly.

Obligation on mortgagee to transfer instead of re-conveying.

(2.) This section does not apply in the case of a mortgagee being or having been in possession.

(3.) This section applies to mortgages made either before or after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

16.—(1.) A mortgagor, as long as his right to redeem subsists, shall, by virtue of this Act, be entitled from time to time, at reasonable times, on his request, and at his own cost, and on payment of the mortgagee's costs and expenses in this behalf, to inspect and make copies or abstracts of or extracts from the documents of title relating to the mortgaged property in the custody or power of the mortgagee.

Power for mortgagor to inspect title deeds.

(2.) This section applies only to mortgages made after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

17.—(1.) A mortgagor seeking to redeem any one mortgage, shall, by virtue of this Act, be entitled to do so, without paying any money due under any separate mortgage made by him, or by any person through whom he claims, on property other than that comprised in the mortgage which he seeks to redeem.

Restriction on consolidation of mortgages.

(2.) This section applies only if and as far as a contrary intention is not expressed in the mortgage deeds or one of them.

(3.) This section applies only where the mortgages or one of them are or is made after the commencement of this Act.

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c. 41.

Leases.

Leasing
powers of
mortgagor and
of mortgagees
in possession.

Leases.

18.—(1.) A mortgagor of land while in possession shall, as against every incumbrancer, have, by virtue of this Act, power to make from time to time any such lease of the mortgaged land, or any part thereof, as is in this section described and authorized.

(2.) A mortgagee of land while in possession shall, as against all prior incumbrancers, if any, and as against the mortgagor, have, by virtue of this Act, power to make from time to time any such lease as aforesaid.

(3.) The leases which this section authorizes are—

(i.) An agricultural or occupation lease for any term not exceeding twenty-one years; and

(ii.) A building lease for any term not exceeding ninety-nine years.

(4.) Every person making a lease under this section may execute and do all assurances and things necessary or proper in that behalf.

(5.) Every such lease shall be made to take effect in possession not later than twelve months after its date.

(6.) Every such lease shall reserve the best rent that can reasonably be obtained, regard being had to the circumstances of the case, but without any fine being taken.

(7.) Every such lease shall contain a covenant by the lessee for payment of the rent, and a condition of re-entry on the rent not being paid within a time therein specified not exceeding thirty days.

(8.) A counterpart of every such lease shall be executed by the lessee and delivered to the lessor, of which execution and delivery the execution of the lease by the lessor shall, in favour of the lessee and all persons deriving title under him, be sufficient evidence.

(9.) Every such building lease shall be made in consideration of the lessee, or some person by whose direction the lease is granted, having erected, or agreeing to erect within not more than five years from the date of the lease, buildings, new or additional, or having improved or repaired buildings, or agreeing to improve or repair buildings within that time, or having

executed, or agreeing to execute, within that time, on the land leased, an improvement for or in connexion with building purposes. 44 & 45 VICT.
C. 41.
Leases.

(10.) In any such building lease a peppercorn rent, or a nominal or other rent less than the rent ultimately payable, may be made payable for the first five years, or any less part of the term.

(11.) In case of a lease by the mortgagor, he shall, within one month after making the lease, deliver to the mortgagee, or, where there are more than one, to the mortgagee first in priority, a counterpart of the lease duly executed by the lessee; but the lessee shall not be concerned to see that this provision is complied with.

(12.) A contract to make or accept a lease under this section may be enforced by or against every person on whom the lease if granted would be binding.

(13.) This section applies only if and as far as a contrary intention is not expressed by the mortgagor and mortgagee in the mortgage deed, or otherwise in writing, and shall have effect subject to the terms of the mortgage deed or of any such writing and to the provisions therein contained.

(14.) Nothing in this Act shall prevent the mortgage deed from reserving to or conferring on the mortgagor or the mortgagee, or both, any further or other powers of leasing or having reference to leasing; and any further or other powers so reserved or conferred shall be exerciseable, as far as may be, as if they were conferred by this Act, and with all the like incidents, effects, and consequences, unless a contrary intention is expressed in the mortgage deed.

(15.) Nothing in this Act shall be construed to enable a mortgagor or mortgagee to make a lease for any longer term or on any other conditions than such as could have been granted or imposed by the mortgagor, with the concurrence of all the incumbrancers, if this Act had not been passed.

(16.) This section applies only in case of a mortgage made after the commencement of this Act; but the provisions thereof, or any of them, may, by agreement in writing made after the commencement of this Act, between mortgagor and mortgagee, be applied to a mortgage made before the commencement of this Act, so, nevertheless, that any such agreement shall not

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c. 41.

Leases.

prejudicially affect any right or interest of any mortgagee not joining in or adopting the agreement.

(17.) The provisions of this section referring to a lease shall be construed to extend and apply, as far as circumstances admit, to any letting, and to an agreement, whether in writing or not, for leasing or letting.

*Sale ;
Insurance ;
Receiver ;
Timber.*
Powers inci-
dent to estate
or interest of
mortgagee.

Sale ; Insurance ; Receiver ; Timber.

19.—(1.) A mortgagee, where the mortgage is made by deed, shall, by virtue of this Act, have the following powers, to the like extent as if they had been in terms conferred by the mortgage deed, but not further (namely) :

- (i.) A power, when the mortgage money has become due, to sell, or to concur with any other person in selling, the mortgaged property, or any part thereof, either subject to prior charges, or not, and either together or in lots, by public auction or by private contract, subject to such conditions respecting title, or evidence of title, or other matter, as he (the mortgagee) thinks fit, with power to vary any contract for sale, and to buy in at an auction, or to rescind any contract for sale, and to re-sell, without being answerable for any loss occasioned thereby ; and
- (ii.) A power, at any time after the date of the mortgage deed, to insure and keep insured against loss or damage by fire any building, or any effects or property of an insurable nature, whether affixed to the freehold or not, being or forming part of the mortgaged property, and the premiums paid for any such insurance shall be a charge on the mortgaged property, in addition to the mortgage money, and with the same priority, and with interest at the same rate as the mortgage money ; and
- (iii.) A power, when the mortgage money has become due, to appoint a receiver of the income of the mortgaged property, or of any part thereof ; and
- (iv.) A power, while the mortgagee is in possession, to cut and sell timber and other trees ripe for cutting, and not planted or left standing for shelter or ornament,

or to contract for any such cutting and sale, to be completed within any time not exceeding twelve months from the making of the contract.

44 & 45 Vict.
c. 41.

*Sale ;
Insurance ;
Receiver ;
Timber.*

(2.) The provisions of this Act relating to the foregoing powers, comprised either in this section, or in any subsequent section regulating the exercise of those powers, may be varied or extended by the mortgage deed, and, as so varied or extended, shall, as far as may be, operate in the like manner and with all the like incidents, effects, and consequences, as if such variations or extensions were contained in this Act.

(3.) This section applies only if and as far as a contrary intention is not expressed in the mortgage deed, and shall have effect subject to the terms of the mortgage deed and to the provisions therein contained.

(4.) This section applies only where the mortgage deed is executed after the commencement of this Act.

20. A mortgagee shall not exercise the power of sale conferred by this Act unless and until—

Regulation of
exercise of
power of sale.

- (i.) Notice requiring payment of the mortgage money has been served on the mortgagor or one of several mortgagors and default has been made in payment of the mortgage money, or of part thereof, for three months after such service ; or
- (ii.) Some interest under the mortgage is in arrear and unpaid for two months after becoming due ; or
- (iii.) There has been a breach of some provision contained in the mortgage deed or in this Act, and on the part of the mortgagor, or of some person concurring in making the mortgage, to be observed or performed, other than and besides a covenant for payment of the mortgage money or interest thereon.

21.—(1.) A mortgagee exercising the power of sale conferred by this Act shall have power (a), by deed, to convey the property sold, for such estate and interest therein as is the subject

Conveyance,
receipt, &c.,
on sale.

(a) An equitable mortgagee cannot convey the legal estate vested in the mortgagor in exercise of the power of sale conferred by this Act. *In re Hodson and Howe's Contract*, 35 Ch. D. 668.

44 & 45 Vict.
c. 41.

*Sale ;
Insurance ;
Receiver ;
Timber.*

of the mortgage, freed from all estates, interests, and rights to which the mortgage has priority, but subject to all estates, interests, and rights which have priority to the mortgage; except that, in the case of copyhold or customary land, the legal right to admittance shall not pass by a deed under this section, unless the deed is sufficient otherwise by law, or is sufficient by custom, in that behalf.

(2.) Where a conveyance is made in professed exercise of the power of sale conferred by this Act, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorize the sale, or that due notice was not given, or that the power was otherwise improperly or irregularly exercised; but any person damnified by an unauthorized, or improper, or irregular exercise of the power shall have his remedy in damages against the person exercising the power.

(3.) The money which is received by the mortgagee, arising from the sale after discharge of prior incumbrances to which the sale is not made subject, if any, or after payment into Court under this Act of a sum to meet any prior incumbrance, shall be held by him in trust to be applied by him, first, in payment of all costs, charges, and expenses, properly incurred by him, as incident to the sale or any attempted sale, or otherwise; and secondly, in discharge of the mortgage money, interest, and costs, and other money, if any, due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgaged property, or authorized to give receipts for the proceeds of the sale thereof.

(4.) The power of sale conferred by this Act may be exercised by any person for the time being entitled to receive and give a discharge for the mortgage money.

(5.) The power of sale conferred by this Act shall not affect the right of foreclosure.

(6.) The mortgagee, his executors, administrators, or assigns, shall not be answerable for any involuntary loss happening in or about the exercise or execution of the power of sale conferred by this Act, or of any trust connected therewith.

(7.) At any time after the power of sale conferred by this Act has become exerciseable, the person entitled to exercise the same may demand and recover from any person, other than a person having in the mortgaged property an estate, interest, or

right in priority to the mortgage, all the deeds and documents relating to the property, or to the title thereto, which a purchaser under the power of sale would be entitled to demand and recover from him.

44 & 45 VICT.
c. 41.

*Sale ;
Insurance ;
Receiver ;
Timber.*

22.—(1.) The receipt in writing of a mortgagee shall be a sufficient discharge for any money arising under the power of sale conferred by this Act, or for any money or securities comprised in his mortgage, or arising thereunder ; and a person paying or transferring the same to the mortgagee shall not be concerned to inquire whether any money remains due under the mortgage.

*Mortgagee's
receipts, dis-
charges, &c.*

(2.) Money received by a mortgagee under his mortgage or from the proceeds of securities comprised in his mortgage, shall be applied in like manner as in this Act directed respecting money received by him arising from a sale under the power of sale conferred by this Act ; but with this variation, that the costs, charges, and expenses payable shall include the costs, charges, and expenses properly incurred of recovering and receiving the money or securities, and of conversion of securities into money, instead of those incident to sale.

23.—(1.) The amount of an insurance effected by a mortgagee against loss or damage by fire under the power in that behalf conferred by this Act, shall not exceed the amount specified in the mortgage deed, or, if no amount is therein specified, then shall not exceed two third parts of the amount that would be required, in case of total destruction, to restore the property insured.

*Amount and
application of
insurance
money.*

(2.) An insurance shall not, under the power conferred by this Act, be effected by a mortgagee in any of the following cases (namely) :

- (i.) Where there is a declaration in the mortgage deed that no insurance is required :
- (ii.) Where an insurance is kept up by or on behalf of the mortgagor in accordance with the mortgage deed :
- (iii.) Where the mortgage deed contains no stipulation respecting insurance, and an insurance is kept up by or on behalf of the mortgagor, to the amount in which the mortgagee is by this Act authorized to insure.

44 & 45 Vict.
c. 41.

*Sale ;
Insurance ;
Receiver ;
Timber.*

(3.) All money received on an insurance effected under the mortgage deed or under this Act shall, if the mortgagee so requires, be applied by the mortgagor in making good the loss or damage in respect of which the money is received.

(4.) Without prejudice to any obligation to the contrary imposed by law, or by special contract, a mortgagee may require that all money received on an insurance be applied in or towards discharge of the money due under his mortgage.

Appointment,
powers, remun-
eration, and
duties of
receiver.

24.—(1.) A mortgagee entitled to appoint a receiver under the power in that behalf conferred by this Act, shall not appoint a receiver until he has become entitled to exercise the power of sale conferred by this Act, but may then, by writing under his hand, appoint such person as he thinks fit to be receiver.

(2.) The receiver shall be deemed to be the agent of the mortgagor; and the mortgagor shall be solely responsible for the receiver's acts or defaults, unless the mortgage deed otherwise provides.

(3.) The receiver shall have power to demand and recover all the income of the property of which he is appointed receiver, by action, distress, or otherwise, in the name either of the mortgagor or of the mortgagee, to the full extent of the estate or interest which the mortgagor could dispose of, and to give effectual receipts, accordingly, for the same.

(4.) A person paying money to the receiver shall not be concerned to inquire whether any case has happened to authorise the receiver to act.

(5.) The receiver may be removed, and a new receiver may be appointed, from time to time by the mortgagee by writing under his hand.

(6.) The receiver shall be entitled to retain out of any money received by him, for his remuneration, and in satisfaction of all costs, charges, and expenses incurred by him as receiver, a commission at such rate, not exceeding five per centum on the gross amount of all money received, as is specified in his appointment, and if no rate is so specified, then at the rate of five per centum on that gross amount, or at such higher rate as the Court thinks fit to allow, on application made by him for that purpose.

(7.) The receiver shall, if so directed in writing by the mortgagee, insure and keep insured against loss or damage by fire,

out of the money received by him, any building, effects, or property comprised in the mortgage, whether affixed to the freehold or not, being of an insurable nature.

44 & 45 Vict.
c. 41.

*Sale ;
Insurance ;
Receiver ;
Timber.*

(8.) The receiver shall apply all money received by him as follows (namely) :

- (i.) In discharge of all rents, taxes, rates, and outgoings whatever affecting the mortgaged property ; and
 - (ii.) In keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the mortgage in right whereof he is receiver ; and
 - (iii.) In payment of his commission, and of the premiums on fire, life, or other insurances, if any, properly payable under the mortgage deed or under this Act, and the cost of executing necessary or proper repairs directed in writing by the mortgagee ; and
 - (iv.) In payment of the interest accruing due in respect of any principal money due under the mortgage ;
- and shall pay the residue of the money received by him to the person who, but for the possession of the receiver, would have been entitled to receive the income of the mortgaged property, or who is otherwise entitled to that property.

Action respecting Mortgage.

*Action respect-
ing Mortgage.*

25.—(1.) Any person entitled to redeem mortgaged property may have a judgment or order for sale instead of for redemption, in an action brought by him either for redemption alone, or for sale alone, or for sale or redemption, in the alternative.

*Sale of mort-
gaged property
in action for
foreclosure,
&c.*

(2.) In any action, whether for foreclosure, or for redemption, or for sale, or for the raising and payment in any manner of mortgage money, the Court, on the request of the mortgagee, or of any person interested either in the mortgage money or in the right of redemption, and, notwithstanding the dissent of any other person, and notwithstanding that the mortgagee or any person so interested does not appear in the action, and without allowing any time for redemption or for payment of any mortgage money, may, if it thinks fit, direct a sale of the mortgaged property, on such terms as it thinks fit, including, if it thinks fit, the deposit in Court of a reasonable sum fixed by the Court, to meet the expenses of sale and to secure performance of the terms.

44 & 45 Vict.
c. 41.

Action respecting Mortgage.

(3.) But, in an action brought by a person interested in the right of redemption and seeking a sale, the Court may, on the application of any defendant, direct the plaintiff to give such security for costs as the Court thinks fit, and may give the conduct of the sale to any defendant, and may give such directions as it thinks fit respecting the costs of the defendants or any of them.

(4.) In any case within this section the Court may, if it thinks fit, direct a sale without previously determining the priorities of incumbrancers.

(5.) This section applies to actions brought either before or after the commencement of this Act.

15 & 16 Vict.
c. 86, s. 48.

(6.) The enactment described in Part II. of the Second Schedule to this Act is hereby repealed.

(7.) This section does not extend to Ireland.

STATUTORY MORTGAGE.

Form of statutory mortgage in schedule.

V.—STATUTORY MORTGAGE.

26.—(1.) A mortgage of freehold or leasehold land may be made by a deed expressed to be made by way of statutory mortgage, being in the form given in Part I. of the Third Schedule to this Act, with such variations and additions, if any, as circumstances may require, and the provisions of this section shall apply thereto.

(2.) There shall be deemed to be included, and there shall by virtue of this Act be implied, in the mortgage deed—

First, a covenant with the mortgagee by the person expressed therein to convey as mortgagor to the effect following (namely):

That the mortgagor will, on the stated day, pay to the mortgagee the stated mortgage money, with interest thereon in the meantime, at the stated rate, and will thereafter, if and as long as the mortgage money or any part thereof remains unpaid, pay to the mortgagee interest thereon, or on the unpaid part thereof, at the stated rate, by equal half-yearly payments, the first thereof to be made at the end of six calendar months from the day stated for payment of the mortgage money:

Secondly, a proviso to the effect following (namely):

That if the mortgagor, on the stated day, pays to the mortgagee the stated mortgage money, with interest thereon in

the meantime, at the stated rate, the mortgagee at any time thereafter, at the request and cost of the mortgagor, shall re-convey the mortgaged property to the mortgagor, or as he shall direct.

44 & 45 Vict.
c. 41.

27.—(1.) A transfer of a statutory mortgage may be made by a deed expressed to be made by way of statutory transfer of mortgage, being in such one of the three forms (A.) and (B.) and (C.) given in Part II. of the Third Schedule to this Act as may be appropriate to the case, with such variations and additions, if any, as circumstances may require, and the provisions of this section shall apply thereto.

Forms of
statutory
transfer of
mortgage in
schedule.

(2.) In whichever of those three forms the deed of transfer is made, it shall have effect as follows (namely) :

(i.) There shall become vested in the person to whom the benefit of the mortgage is expressed to be transferred, who, with his executors, administrators, and assigns, is hereafter in this section designated the transferee, the right to demand, sue for, recover, and give receipts for the mortgage money, or the unpaid part thereof, and the interest then due, if any, and thenceforth to become due thereon, and the benefit of all securities for the same, and the benefit of and the right to sue on all covenants with the mortgagee, and the right to exercise all powers of the mortgagee :

(ii.) All the estate and interest, subject to redemption, of the mortgagee in the mortgaged land shall vest in the transferee, subject to redemption.

(3.) If the deed of transfer is made in the form (B.), there shall also be deemed to be included, and there shall by virtue of this Act be implied therein, a covenant with the transferee by the person expressed to join therein as covenantor to the effect following (namely) :

That the covenantor will, on the next of the days by the mortgage deed fixed for payment of interest, pay to the transferee the stated mortgage money, or so much thereof as then remains unpaid, with interest thereon, or on the unpaid part thereof, in the meantime, at the rate stated in the mortgage deed ; and will thereafter, as long as the mortgage money or any part thereof remains unpaid, pay

44 & 45 Vict.
c. 41.

to the transferee interest on that sum, or the unpaid part thereof, at the same rate, on the successive days by the mortgage deed fixed for payment of interest.

(4.) If the deed of transfer is made in the form (C.), it shall, by virtue of this Act, operate, not only as a statutory transfer of mortgage, but also as a statutory mortgage, and the provisions of this section shall have effect in relation thereto accordingly; but it shall not be liable to any increased stamp duty by reason only of it being designated a mortgage.

Implied cove-
nants, joint
and several.

28. In a deed of statutory mortgage, or of statutory transfer of mortgage, where more persons than one are expressed to convey as mortgagors, or to join as covenantors, the implied covenant on their part shall be deemed to be a joint and several covenant by them; and where there are more mortgagees or more transferees than one, the implied covenant with them shall be deemed to be a covenant with them jointly, unless the amount secured is expressed to be secured to them in shares or distinct sums, in which latter case the implied covenant with them shall be deemed to be a covenant with each severally in respect of the share or distinct sum secured to him.

Form of re-
conveyance
of statutory
mortgage in
schedule.

29. A re-conveyance of a statutory mortgage may be made by a deed expressed to be made by way of statutory re-conveyance of mortgage, being in the form given in Part III. of the Third Schedule to this Act, with such variations and additions, if any, as circumstances may require.

TRUST AND
MORTGAGE
ESTATES
ON DEATH.

Devolution
of trust and
mortgage
estates on
death.

VI.—TRUST AND MORTGAGE ESTATES ON DEATH.

30.—(1.) Where an estate or interest of inheritance, or limited to the heir as special occupant in any tenements or hereditaments, corporeal or incorporeal, is vested on any trust, or by way of mortgage in any person solely, the same shall, on his death, notwithstanding any testamentary disposition, devolve to and become vested in his personal representatives or representative from time to time, in like manner as if the same were a chattel real vesting in them or him; and accordingly all the like powers, for one only of several joint personal representa-

tives, as well as for a single personal representative, and for all the personal representatives together, to dispose of and otherwise deal with the same, shall belong to the deceased's personal representatives or representative from time to time, with all the like incidents, but subject to all the like rights, equities, and obligations, as if the same were a chattel real vesting in them or him; and, for the purposes of this section, the personal representatives, for the time being, of the deceased, shall be deemed in law his heirs and assigns, within the meaning of all trusts and powers.

44 & 45 VICT.
c. 41.

(2.) Section four of the Vendor and Purchaser Act, 1874, and section forty-eight of the Land Transfer Act, 1875, are hereby repealed.

37 & 38 Vict.
c. 78.
38 & 39 Vict.
c. 87.

(3.) This section, including the repeals therein, applies only in cases of death after the commencement of this Act.

VII.—TRUSTEES AND EXECUTORS.

TRUSTEES AND EXECUTORS.

31.—(1.) Where a trustee, either original or substituted, and whether appointed by a Court or otherwise, is dead, or remains out of the United Kingdom for more than twelve months, or desires to be discharged from the trusts or powers reposed in or conferred on him, or refuses or is unfit to act therein, or is incapable of acting therein, then the person or persons nominated for this purpose by the instrument, if any, creating the trust, or if there is no such person, or no such person able and willing to act, then the surviving or continuing trustees or trustee for the time being, or the personal representatives of the last surviving or continuing trustee, may, by writing, appoint another person or other persons to be a trustee or trustees in the place of the trustee dead, remaining out of the United Kingdom, desiring to be discharged, refusing or being unfit, or being incapable, as aforesaid.

Appointment
of new
trustees,
vesting of
trust pro-
perty, &c.

(2.) On an appointment of a new trustee, the number of trustees may be increased.

(3.) On an appointment of a new trustee, it shall not be obligatory to appoint more than one new trustee, where only one trustee was originally appointed, or to fill up the original number of trustees, where more than two trustees were origi-

44 & 45 Vict.
c. 41.

nally appointed ; but, except where only one trustee was originally appointed, a trustee shall not be discharged under this section from his trust unless there will be at least two trustees to perform the trust.

(4.) On an appointment of a new trustee any assurance or thing requisite for vesting the trust property, or any part thereof, jointly in the persons who are the trustees, shall be executed or done.

(5.) Every new trustee so appointed, as well before as after all the trust property becomes by law, or by assurance, or otherwise, vested in him, shall have the same powers, authorities, and discretions, and may in all respects act, as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

(6.) The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will, but dying before the testator ; and those relative to a continuing trustee include a refusing or retiring trustee, if willing to act in the execution of the provisions of this section.

(7.) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect, subject to the terms of that instrument and to any provisions therein contained.

(8.) This section applies to trusts created either before or after the commencement of this Act.

Retirement
of trustee.

32.—(1.) Where there are more than two trustees, if one of them by deed declares that he is desirous of being discharged from the trust, and if his co-trustees and such other person, if any, as is empowered to appoint trustees, by deed consent to the discharge of the trustee, and to the vesting in the co-trustees alone of the trust property, then the trustee desirous of being discharged shall be deemed to have retired from the trust, and shall, by the deed, be discharged therefrom under this Act, without any new trustee being appointed in his place.

(2.) Any assurance or thing requisite for vesting the trust property in the continuing trustees alone shall be executed or done.

(3.) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating

the trust, and shall have effect subject to the terms of that instrument and to any provisions therein contained.

44 & 45 Vict.
c. 41.

(4.) This section applies to trusts created either before or after the commencement of this Act.

33.—(1.) Every trustee appointed by the Court of Chancery, or by the Chancery Division of the Court, or by any other court of competent jurisdiction, shall, as well before as after the trust property becomes by law, or by assurance, or otherwise, vested in him, have the same powers, authorities, and discretions, and may in all respects act, as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

Powers of
new trustee
appointed by
Court.

(2.) This section applies to appointments made either before or after the commencement of this Act.

34.—(1.) Where a deed by which a new trustee is appointed to perform any trust contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust, or in any chattel so subject, or the right to recover and receive any debt or other thing in action so subject, shall vest in the persons who by virtue of the deed become and are the trustees for performing the trust, that declaration shall, without any conveyance or assignment, operate to vest in those persons, as joint tenants, and for the purposes of the trust, that estate, interest, or right.

Vesting of
trust property
in new or
continuing
trustees.

(2.) Where a deed by which a retiring trustee is discharged under this Act contains such a declaration as is in this section mentioned by the retiring and continuing trustees, and by the other person, if any, empowered to appoint trustees, that declaration shall, without any conveyance or assignment, operate to vest in the continuing trustees alone, as joint tenants, and for the purposes of the trust, the estate, interest, or right to which the declaration relates.

(3.) This section does not extend to any legal estate or interest in copyhold or customary land, or to land conveyed by way of mortgage for securing money subject to the trust, or to any such share, stock, annuity, or property as is only transferable in books kept by a company or other body, or in manner prescribed by or under Act of Parliament.

(4.) For purposes of registration of the deed in any registry,

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44 & 45 Vict.
c. 41.

the person or persons making the declaration shall be deemed the conveying party or parties, and the conveyance shall be deemed to be made by him or them under a power conferred by this Act.

(5.) This section applies only to deeds executed after the commencement of this Act.

Power for
trustees for
sale to sell by
auction, &c.

35.—(1.) Where a trust for sale or a power of sale of property is vested in trustees, they may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of title, or other matter, as the trustees think fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale, and to re-sell, without being answerable for any loss.

(2.) This section applies only if and as far as a contrary intention is not expressed in the instrument creating the trust or power, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(3.) This section applies only to a trust or power created by an instrument coming into operation after the commencement of this Act.

Trustees'
receipts.

36.—(1.) The receipt in writing of any trustees or trustee for any money, securities, or other personal property or effects payable, transferable, or deliverable to them or him under any trust or power shall be a sufficient discharge for the same, and shall effectually exonerate the person paying, transferring, or delivering the same from seeing to the application or being answerable for any loss or misapplication thereof.

(2.) This section applies to trusts created either before or after the commencement of this Act.

Power for
executors and
trustees to
compound, &c.

37.—(1.) An executor may pay or allow any debt or claim on any evidence that he thinks sufficient.

(2.) An executor, or two or more trustees acting together, or a sole acting trustee where, by the instrument, if any, creating the trust, a sole trustee is authorised to execute the trusts and powers thereof, may, if and as he or they think fit, accept any

composition, or any security, real or personal, for any debt, or for any property, real or personal, claimed, and may allow any time for payment of any debt, and may compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the testator's estate, or to the trust, and for any of those purposes may enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things as to him or them seem expedient, without being responsible for any loss occasioned by any act or thing so done by him or them in good faith.

44 & 45 Vict.
c. 41.

(3.) As regards trustees, this section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(4.) This section applies to executorships and trusts constituted or created either before or after the commencement of this Act.

38.—(1.) Where a power or trust is given to or vested in two or more executors or trustees jointly, then, unless the contrary is expressed in the instrument, if any, creating the power or trust, the same may be exercised or performed by the survivor or survivors of them for the time being.

Powers to two
or more exe-
cutors or
trustees.

(2.) This section applies only to executorships and trusts constituted after or created by instruments coming into operation after the commencement of this Act.

VIII.—MARRIED WOMEN.

39.—(1.) Notwithstanding that a married woman is restrained from anticipation, the Court may, if it thinks fit, where it appears to the Court to be for her benefit, by judgment or order, with her consent, bind her interest in any property.

MARRIED
WOMEN.

Power for
Court to
bind interest
of married
woman.

(2.) This section applies only to judgments or orders made after the commencement of this Act.

40.—(1.) A married woman, whether an infant or not, shall by virtue of this Act have power, as if she were unmarried and of full age, by deed, to appoint an attorney on her behalf for

Power of
attorney
of married
woman.

44 & 45 Vict.
c. 41.

the purpose of executing any deed or doing any other act which she might herself execute or do; and the provisions of this Act relating to instruments creating powers of attorney shall apply thereto (a).

(2.) This section applies only to deeds executed after the commencement of this Act.

INFANTS.

Sales and
leases on
behalf of in-
fant owner.

40 & 41 Vict.
c. 18.

Management
of land and
receipt and
application of
income during
minority.

IX.—INFANTS.

41. Where a person in his own right seised of or entitled to land for an estate in fee simple, or for any leasehold interest at a rent, is an infant, the land shall be deemed to be a settled estate within the Settled Estates Act, 1877.

42.—(1.) If and as long as any person who would but for this section be beneficially entitled to the possession of any land is an infant, and being a woman is also unmarried, the trustees appointed for this purpose by the settlement, if any, or if there are none so appointed, then the persons, if any, who are for the time being under the settlement trustees with power of sale of the settled land, or of part thereof, or with power of consent to or approval of the exercise of such a power of sale, or if there are none, then any persons appointed as trustees for this purpose by the Court, on the application of a guardian or next friend of the infant, may enter into and continue in possession of the land; and in every such case the subsequent provisions of this section shall apply.

(2.) The trustees shall manage or superintend the management of the land, with full power to fell timber or cut underwood from time to time in the usual course for sale, or for repairs or otherwise, and to erect, pull down, rebuild, and repair houses, and other buildings and erections, and to continue the working of mines, minerals, and quarries which have usually been worked, and to drain or otherwise improve the land or any part thereof, and to insure against loss by fire, and to make allowances to and arrangements with tenants and others, and to determine tenancies, and to accept surrenders of leases and tenancies, and

(a) An attorney appointed by a married woman under this section cannot on her behalf execute any deed which independently of this section must have been acknowledged by her in order to pass her interest.

generally to deal with the land in a proper and due course of management; but so that, where the infant is impeachable for waste, the trustees shall not commit waste, and shall cut timber on the same terms only, and subject to the same restrictions, on and subject to which the infant could, if of full age, cut the same.

44 & 45 VICT.
c. 41.

(3.) The trustees may, from time to time, out of the income of the land, including the produce of the sale of timber and underwood, pay the expenses incurred in the management, or in the exercise of any power conferred by this section, or otherwise in relation to the land, and all outgoings not payable by any tenant or other person, and shall keep down any annual sum, and the interest of any principal sum, charged on the land.

(4.) The trustees may apply at discretion any income which, in the exercise of such discretion, they deem proper, according to the infant's age, for his or her maintenance, education or benefit, or pay thereout any money to the infant's parent or guardian, to be applied for the same purposes.

(5.) The trustees shall lay out the residue of the income of the land in investment on securities on which they are by the settlement, if any, or by law, authorised to invest trust money, with power to vary investments; and shall accumulate the income of the investments so made in the way of compound interest, by from time to time similarly investing such income and the resulting income of investments; and shall stand possessed of the accumulated fund arising from income of the land and from investments of income on the trusts following (namely):

- (i.) If the infant attains the age of twenty-one years, then in trust for the infant:
- (ii.) If the infant is a woman and marries while an infant, then in trust for her separate use, independently of her husband, and so that her receipt, after she marries, and though still an infant, shall be a good discharge; but
- (iii.) If the infant dies while an infant, and being a woman without having been married, then, where the infant was, under a settlement, tenant for life, or by purchase, tenant in tail, or tail male or tail female, on the trusts, if any, declared of the accumulated fund

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c. 41.

by that settlement; but where no such trusts are declared, or the infant has taken the land from which the accumulated fund is derived by descent, and not by purchase, or the infant is tenant for an estate in fee simple, absolute or determinable, then in trust for the infant's personal representatives, as part of the infant's personal estate;

but the accumulations, or any part thereof, may at any time be applied as if the same were income arising in the then current year.

(6.) Where the infant's estate or interest is in an undivided share of land, the powers of this section relative to the land may be exercised jointly with persons entitled to possession of, or having power to act in relation to, the other undivided share or shares.

(7.) This section applies only if and as far as a contrary intention is not expressed in the instrument under which the interest of the infant arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(8.) This section applies only where that instrument comes into operation after the commencement of this Act.

Application by
trustees of
income of
property of
infant for
maintenance,
&c.

43.—(1.) Where any property is held by trustees in trust for an infant either for life or for any greater interest, and whether absolutely, or contingently on his attaining the age of twenty-one years, or on the occurrence of any event before his attaining that age, the trustees may, at their sole discretion, pay to the infant's parent or guardian, if any, or otherwise apply for or towards the infant's maintenance, education, or benefit, the income of that property, or any part thereof, whether there is any other fund applicable to the same purpose, or any person bound by law to provide for the infant's maintenance or education, or not.

(2.) The trustees shall accumulate all the residue of that income in the way of compound interest, by investing the same and the resulting income thereof from time to time on securities on which they are by the settlement, if any, or by law, authorised to invest trust money, and shall hold those accumulations for the benefit of the person who ultimately becomes entitled to

the property from which the same arise: but so that the trustees may at any time, if they think fit, apply those accumulations, or any part thereof, as if the same were income arising in the then current year. 44 & 45 VICT.
C. 41.

(3.) This section applies only if and as far as a contrary intention is not expressed in the instrument under which the interest of the infant arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(4.) This section applies whether that instrument comes into operation before or after the commencement of this Act.

X.—RENTCHARGES AND OTHER ANNUAL SUMS.

44.—(1.) Where a person is entitled to receive out of any land, or out of the income of any land, any annual sum, payable half-yearly or otherwise, whether charged on the land or on the income of the land, and whether by way of rentcharge or otherwise, not being rent incident to a reversion, then, subject and without prejudice to all estates, interests, and rights having priority to the annual sum, the person entitled to receive the same shall have such remedies for recovering and compelling payment of the same as are described in this section, as far as those remedies might have been conferred by the instrument under which the annual sum arises, but not further. RENTCHARGES
AND OTHER
ANNUAL SUMS.

Remedies for
recovery of
annual sums
charged on
land.

(2.) If at any time the annual sum or any part thereof is unpaid for twenty-one days next after the time appointed for any payment in respect thereof, the person entitled to receive the annual sum may enter into and distrain on the land charged or any part thereof, and dispose according to law of any distress found, to the intent that thereby or otherwise the annual sum and all arrears thereof, and all costs and expenses occasioned by non-payment thereof, may be fully paid.

(3.) If at any time the annual sum or any part thereof is unpaid for forty days next after the time appointed for any payment in respect thereof, then, although no legal demand has been made for payment thereof, the person entitled to receive the annual sum may enter into possession of and hold the land charged or any part thereof, and take the income thereof, until thereby or otherwise the annual sum and all arrears thereof due

44 & 45 Vict.
c. 41.

at the time of his entry, or afterwards becoming due during his continuance in possession, and all costs and expenses occasioned by non-payment of the annual sum, are fully paid; and such possession when taken shall be without impeachment of waste.

(4.) In the like case the person entitled to the annual charge, whether taking possession or not, may also by deed demise the land charged, or any part thereof, to a trustee for a term of years, with or without impeachment of waste, on trust, by mortgage, or sale, or demise, for all or any part of the term, of the land charged, or of any part thereof, or by receipt of the income thereof, or by all or any of those means, or by any other reasonable means, to raise and pay the annual sum and all arrears thereof due or to become due, and all costs and expenses occasioned by non-payment of the annual sum, or incurred in compelling or obtaining payment thereof, or otherwise relating thereto, including the costs of the preparation and execution of the deed of demise, and the costs of the execution of the trusts of that deed; and the surplus, if any, of the money raised, or of the income received, under the trusts of that deed shall be paid to the person for the time being entitled to the land therein comprised in reversion immediately expectant on the term thereby created.

(5.) This section applies only if and as far as a contrary intention is not expressed in the instrument under which the annual sum arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(6.) This section applies only where that instrument comes into operation after the commencement of this Act.

Redemption of
quit rents and
other per-
petual charges.

45.—(1.) Where there is a quit-rent, chief-rent, rentcharge, or other annual sum issuing out of land (in this section referred to as the rent), the Copyhold Commissioners shall at any time, on the requisition of the owner of the land, or of any person interested therein, certify the amount of money in consideration whereof the rent may be redeemed.

(2.) Where the person entitled to the rent is absolutely entitled thereto in fee simple in possession, or is empowered to dispose thereof absolutely, or to give an absolute discharge for the capital value thereof, the owner of the land, or any person interested therein, may, after serving one month's notice on the

person entitled to the rent, pay or tender to that person the amount certified by the Commissioners. 44 & 45 Vict.
c. 41.

(3.) On proof to the Commissioners that payment or tender has been so made, they shall certify that the rent is redeemed under this Act; and that certificate shall be final and conclusive, and the land shall be thereby absolutely freed and discharged from the rent.

(4.) Every requisition under this section shall be in writing; and every certificate under this section shall be in writing, sealed with the seal of the Commissioners.

(5.) This section does not apply to tithe rentcharge, or to a rent reserved on a sale or lease, or to a rent made payable under a grant or licence for building purposes, or to any sum or payment issuing out of land not being perpetual.

(6.) This section applies to rents payable at, or created after, the commencement of this Act.

(7.) This section does not extend to Ireland.

XI.—POWERS OF ATTORNEY.

POWERS OF ATTORNEY.

46.—(1.) The donee of a power of attorney may, if he thinks fit, execute or do any assurance, instrument, or thing in and with his own name and signature and his own seal, where sealing is required, by the authority of the donor of the power; and every assurance, instrument, and thing so executed and done shall be as effectual in law, to all intents, as if it had been executed or done by the donee of the power in the name and with the signature and seal of the donor thereof.

Execution
under power
of attorney.

(2.) This section applies to powers of attorney created by instruments executed either before or after the commencement of this Act.

47.—(1.) Any person making or doing any payment or act, in good faith, in pursuance of a power of attorney, shall not be liable in respect of the payment or act by reason that before the payment or act the donor of the power had died or become lunatic, of unsound mind, or bankrupt, or had revoked the power, if the fact of death, lunacy, unsoundness of mind, bankruptcy, or revocation was not at the time of the payment or act known to the person making or doing the same.

Payment by
attorney under
power without
notice of
death, &c.,
good.

44 & 45 Vict.
c. 41.

(2.) But this section shall not affect any right against the payee of any person interested in any money so paid ; and that person shall have the like remedy against the payee as he would have had against the payer if the payment had not been made by him.

(3.) This section applies only to payments and acts made and done after the commencement of this Act.

Deposit of
original in-
struments
creating
powers of
attorney.

48.—(1.) An instrument creating a power of attorney, its execution being verified by affidavit, statutory declaration, or other sufficient evidence, may, with the affidavit or declaration, if any, be deposited in the Central Office of the Supreme Court of Judicature.

(2.) A separate file of instruments so deposited shall be kept, and any person may search that file, and inspect every instrument so deposited, and an office copy thereof shall be delivered out to him on request.

(3.) A copy of an instrument so deposited may be presented at the office, and may be stamped or marked as an office copy, and when so stamped or marked shall become and be an office copy.

(4.) An office copy of an instrument so deposited shall without further proof be sufficient evidence of the contents of the instrument and of the deposit thereof in the Central Office.

(5.) General rules may be made for purposes of this section, regulating the practice of the Central Office, and prescribing, with the concurrence of the Commissioners of Her Majesty's Treasury, the fees to be taken therein.

(6.) This section applies to instruments creating powers of attorney executed either before or after the commencement of this Act.

CONSTRUCTION
AND EFFECT OF
DEEDS AND
OTHER
INSTRUMENTS.

XII.—CONSTRUCTION AND EFFECT OF DEEDS AND OTHER INSTRUMENTS.

Use of word
grant unneces-
sary.

49.—(1.) It is hereby declared that the use of the word *grant* is not necessary in order to convey tenements or hereditaments, corporeal or incorporeal.

(2.) This section applies to conveyances made before or after the commencement of this Act.

50.—(1.) Freehold land, or a thing in action, may be conveyed by a person to himself jointly with another person, by the like means by which it might be conveyed by him to another person; and may, in like manner, be conveyed by a husband to his wife, and by a wife to her husband, alone or jointly with another person.

44 & 45 Vict.
c. 41.

Conveyance
by a person to
himself, &c.

(2.) This section applies only to conveyances made after the commencement of this Act.

51.—(1.) In a deed it shall be sufficient, in the limitation of an estate in fee simple, to use the words in fee simple, without the word heirs; and in the limitation of an estate in tail, to use the words in tail without the words heirs of the body; and in the limitation of an estate in tail male or in tail female, to use the words in tail male, or in tail female, as the case requires, without the words heirs male of the body, or heirs female of the body.

Words of
limitation in
fee or in tail.

(2.) This section applies only to deeds executed after the commencement of this Act.

52.—(1.) A person to whom any power, whether coupled with an interest or not, is given may by deed release, or contract not to exercise, the power.

Powers simply
collateral.

(2.) This section applies to powers created by instruments coming into operation either before or after the commencement of this Act.

53.—(1.) A deed expressed to be supplemental to a previous deed, or directed to be read as an annex thereto, shall, as far as may be, be read and have effect as if the deed so expressed or directed were made by way of indorsement on the previous deed, or contained a full recital thereof.

Construction
of supple-
mental or
annexed deed.

(2.) This section applies to deeds executed either before or after the commencement of this Act.

54.—(1.) A receipt for consideration money or securities in the body of a deed shall be a sufficient discharge for the same to the person paying or delivering the same, without any further receipt for the same being indorsed on the deed.

Receipt in
deed sufficient.

(2.) This section applies only to deeds executed after the commencement of this Act.

44 & 45 Vict.
c. 41.

Receipt in
deed or
indorsed,
evidence for
subsequent
purchaser.

55.—(1.) A receipt for consideration money or other consideration in the body of a deed or indorsed thereon shall, in favour of a subsequent purchaser, not having notice that the money or other consideration thereby acknowledged to be received was not, in fact, paid or given, wholly or in part, be sufficient evidence of the payment or giving of the whole amount thereof.

(2.) This section applies only to deeds executed after the commencement of this Act.

Receipt in
deed or
indorsed,
authority for
payment to
solicitor.

56.—(1.) Where a solicitor produces a deed, having in the body thereof or indorsed thereon a receipt for consideration money or other consideration, the deed being executed, or the indorsed receipt being signed, by the person entitled to give a receipt for that consideration, the deed shall be sufficient authority to the person liable to pay or give the same for his paying or giving the same to the solicitor, without the solicitor producing any separate or other direction or authority in that behalf from the person who executed or signed the deed or receipt.

(2.) This section applies only in cases where consideration is to be paid or given after the commencement of this Act.

Sufficiency of
forms in
4th schedule.

57. Deeds in the form of and using the expressions in the forms given in the Fourth Schedule to this Act, or in the like form or using expressions to the like effect, shall, as regards form and expression in relation to the provisions of this Act, be sufficient.

Covenants to
bind heirs, &c.

58.—(1.) A covenant relating to land of inheritance, or devolving on the heir as special occupant, shall be deemed to be made with the covenantee, his heirs and assigns, and shall have effect as if heirs and assigns were expressed.

(2.) A covenant relating to land not of inheritance, or not devolving on the heir as special occupant, shall be deemed to be made with the covenantee, his executors, administrators, and assigns, and shall have effect as if executors, administrators, and assigns were expressed.

(3.) This section applies only to covenants made after the commencement of this Act. 44 & 45 VICT.
c. 41.

59.—(1.) A covenant, and a contract under seal, and a bond or obligation under seal, though not expressed to bind the heirs, shall operate in law to bind the heirs and real estate, as well as the executors and administrators and personal estate, of the person making the same, as if heirs were expressed. Covenants to
extend to
heirs, &c.

(2.) This section extends to a covenant implied by virtue of this Act.

(3.) This section applies only if and as far as a contrary intention is not expressed in the covenant, contract, bond, or obligation, and shall have effect subject to the terms of the covenant, contract, bond, or obligation, and to the provisions therein contained.

(4.) This section applies only to a covenant, contract, bond, or obligation made or implied after the commencement of this Act.

60.—(1.) A covenant, and a contract under seal, and a bond or obligation under seal, made with two or more jointly, to pay money or to make a conveyance, or to do any other act, to them or for their benefit, shall be deemed to include, and shall, by virtue of this Act, imply, an obligation to do the act to, or for the benefit of, the survivor or survivors of them, and to, or for the benefit of, any other person to whom the right to sue on the covenant, contract, bond, or obligation devolves. Effect of cove-
nant with two
or more
jointly.

(2.) This section extends to a covenant implied by virtue of this Act.

(3.) This section applies only if and as far as a contrary intention is not expressed in the covenant, contract, bond, or obligation, and shall have effect subject to the covenant, contract, bond or obligation, and to the provisions therein contained.

(4.) This section applies only to a covenant, contract, bond, or obligation made or implied after the commencement of this Act.

61.—(1.) Where in a mortgage, or an obligation for payment of money, or a transfer of a mortgage or of such an obligation, the sum, or any part of the sum, advanced or owing is expressed Effect of ad-
vance on joint
account, &c.

44 & 45 VICT.
c. 41.

to be advanced by or owing to more persons than one out of money, or as money, belonging to them on a joint account, or a mortgage, or such an obligation, or such a transfer is made to more persons than one, jointly, and not in shares, the mortgage-money, or other money, or money's worth for the time being due to those persons on the mortgage or obligation, shall be deemed to be and remain money or money's worth belonging to those persons on a joint account, as between them and the mortgagor or obligor; and the receipt in writing of the survivors or last survivor of them, or of the personal representatives of the last survivor, shall be a complete discharge for all money or money's worth for the time being due, notwithstanding any notice to the payer of a severance of the joint account.

(2.) This section applies only if and as far as a contrary intention is not expressed in the mortgage, or obligation, or transfer, and shall have effect subject to the terms of the mortgage, or obligation, or transfer, and to the provisions therein contained.

(3.) This section applies only to a mortgage, or obligation, or transfer made after the commencement of this Act.

Grants of
easements,
&c., by way of
use.

62.—(1.) A conveyance of freehold land to the use that any person may have, for an estate or interest not exceeding in duration the estate conveyed in the land, any easement, right, liberty, or privilege in, or over, or with respect to that land, or any part thereof, shall operate to vest in possession in that person that easement, right, liberty, or privilege, for the estate or interest expressed to be limited to him; and he, and the persons deriving title under him, shall have, use, and enjoy the same accordingly.

(2.) This section applies only to conveyances made after the commencement of this Act.

Provision for
all the estate,
&c.

63.—(1.) Every conveyance shall, by virtue of this Act, be effectual to pass all the estate, right, title, interest, claim, and demand which the conveying parties respectively have, in, to, or on the property conveyed, or expressed or intended so to be, or which they respectively have power to convey in, to, or on the same.

(2.) This section applies only if and as far as a contrary

intention is not expressed in the conveyance, and shall have effect subject to the terms of the conveyance and to the provisions therein contained. 44 & 45 Vict.
c. 41.

(3.) This section applies only to conveyances made after the commencement of this Act.

64. In the construction of a covenant or proviso, or other provision, implied in a deed by virtue of this Act, words importing the singular or plural number, or the masculine gender, shall be read as also importing the plural or singular number, or as extending to females, as the case may require. Construction
of implied
covenants.

XIII.—LONG TERMS.

65.—(1.) Where a residue unexpired of not less than two hundred years of a term, which, as originally created, was for not less than three hundred years, is subsisting in land, whether being the whole land originally comprised in the term, or part only thereof, without any trust or right of redemption affecting the term in favour of the freeholder, or other person entitled in reversion expectant on the term, and without any rent, or with merely a peppercorn rent or other rent having no money value, incident to the reversion, or having had a rent, not being merely a peppercorn rent or other rent having no money value, originally so incident, which subsequently has been released, or has become barred by lapse of time, or has in any other way ceased to be payable, then the term may be enlarged into a fee simple in the manner, and subject to the restrictions, in this section provided. LONG TERMS.
Enlargement
of residue of
long term into
fee simple.

(2.) Each of the following persons (namely):

- (i.) Any person beneficially entitled in right of the term, whether subject to any incumbrance or not, to possession of any land comprised in the term; but, in case of a married woman, with the concurrence of her husband, unless she is entitled for her separate use, whether with restraint on anticipation or not, and then without his concurrence;
- (ii.) Any person being in receipt of income as trustee, in right of the term, or having the term vested in him

44 & 45 VICT.
c. 41.

in trust for sale, whether subject to any incumbrance or not ;

(iii.) Any person in whom, as personal representative of any deceased person, the term is vested, whether subject to any incumbrance or not ;

shall, as far as regards the land to which he is entitled, or in which he is interested, in right of the term, in any such character as aforesaid, have power by deed to declare to the effect that, from and after the execution of the deed, the term shall be enlarged into a fee simple.

(3.) Thereupon, by virtue of the deed and of this Act, the term shall become and be enlarged accordingly, and the person in whom the term was previously vested shall acquire and have in the land a fee simple instead of the term.

(4.) The estate in fee simple so acquired by enlargement shall be subject to all the same trusts, powers, executory limitations over, rights, and equities, and to all the same covenants and provisions relating to user and enjoyment, and to all the same obligations of every kind, as the term would have been subject to if it had not been so enlarged.

(5.) But where any land so held for the residue of a term has been settled in trust by reference to other land, being freehold land, so as to go along with that other land as far as the law permits, and, at the time of enlargement, the ultimate beneficial interest in the term, whether subject to any subsisting particular estate or not, has not become absolutely and indefeasibly vested in any person, then the estate in fee simple acquired as aforesaid shall, without prejudice to any conveyance for value previously made by a person having a contingent or defeasible interest in the term, be liable to be, and shall be, conveyed and settled in like manner as the other land, being freehold land, aforesaid, and until so conveyed and settled shall devolve beneficially as if it had been so conveyed and settled.

(6.) The estate in fee simple so acquired shall, whether the term was originally created without impeachment of waste or not, include the fee simple in all mines and minerals which at the time of enlargement have not been severed in right, or in fact, or have not been severed or reserved by an inclosure Act or award.

(7.) This section applies to every such term as aforesaid subsisting at or after the commencement of this Act.

XIV.—ADOPTION OF ACT.

44 & 45 VICT.
c. 41.ADOPTION OF
ACT.Protection of
solicitor and
trustees adopt-
ing Act.

66.—(1.) It is hereby declared that the powers given by this Act to any person, and the covenants, provisions, stipulations, and words which under this Act are to be deemed included or implied in any instrument, or are by this Act made applicable to any contract for sale or other transaction, are and shall be deemed in law proper powers, covenants, provisions, stipulations, and words to be given by or to be contained in any such instrument, or to be adopted in connexion with, or applied to, any such contract or transaction; and a solicitor shall not be deemed guilty of neglect or breach of duty, or become in any way liable, by reason of his omitting, in good faith, in any such instrument, or in connexion with any such contract or transaction, to negative the giving, inclusion, implication, or application of any of those powers, covenants, provisions, stipulations, or words, or to insert or apply any others in place thereof, in any case where the provisions of this Act would allow of his doing so.

(2.) But nothing in this Act shall be taken to imply that the insertion in any such instrument, or the adoption in connexion with, or the application to, any contract or transaction, of any further or other powers, covenants, provisions, stipulations, or words is improper.

(3.) Where the solicitor is acting for trustees, executors, or other persons in a fiduciary position, those persons shall also be protected in like manner.

(4.) Where such persons are acting without a solicitor, they shall also be protected in like manner.

XV.—MISCELLANEOUS.

MISCELLA-
NEOUS.

67.—(1.) Any notice required or authorized by this Act to be served shall be in writing.

Regulations
respecting
notice.

(2.) Any notice required or authorized by this Act to be served on a lessee or mortgagor shall be sufficient, although only addressed to the lessee or mortgagor by that designation, without his name, or generally to the persons interested, without any name, and notwithstanding that any person to be affected by the notice is absent, under disability, unborn, or unascertained.

44 & 45 Vict.
c. 41.

(3.) Any notice required or authorized by this Act to be served shall be sufficiently served if it is left at the last-known place of abode or business in the United Kingdom of the lessee, lessor, mortgagee, mortgagor, or other person to be served, or, in case of a notice required or authorized to be served on a lessee or mortgagor, is affixed or left for him on the land or any house or building comprised in the lease or mortgage, or, in case of a mining lease, is left for the lessee at the office or counting-house of the mine.

(4.) Any notice required or authorized by this Act to be served shall also be sufficiently served if it is sent by post in a registered letter addressed to the lessee, lessor, mortgagee, mortgagor, or other person to be served, by name, at the aforesaid place of abode or business, office, or counting-house, and if that letter is not returned through the post-office undelivered; and that service shall be deemed to be made at the time at which the registered letter would in the ordinary course be delivered.

(5.) This section does not apply to notices served in proceedings in the Court.

Short title of
5 & 6 Will. 4,
c. 62.

68. The Act described in Part II. of the First Schedule to this Act shall, by virtue of this Act, have the short title of the Statutory Declarations Act, 1835, and may be cited by that short title in any declaration made for any purpose under or by virtue of that Act, or in any other document, or in any Act of Parliament.

COURT;
PROCEDURE;
ORDERS.

Regulations
respecting
payments into
Court and
applications.

XVI.—COURT; PROCEDURE; ORDERS.

69.—(1.) All matters within the jurisdiction of the Court under this Act shall, subject to the Acts regulating the Court, be assigned to the Chancery Division of the Court.

(2.) Payment of money into Court shall effectually exonerate therefrom the person making the payment.

(3.) Every application to the Court shall, except where it is otherwise expressed, be by summons at Chambers.

(4.) On an application by a purchaser notice shall be served in the first instance on the vendor.

(5.) On an application by a vendor notice shall be served in the first instance on the purchaser.

(6.) On any application notice shall be served on such persons, 44 & 45 Vict.
c. 41.
if any, as the Court thinks fit.

(7.) The Court shall have full power and discretion to make such order as it thinks fit respecting the costs, charges, or expenses of all or any of the parties to any application.

(8.) General rules for purposes of this Act shall be deemed 39 & 40 Vict.
c. 59, s. 17.
Rules of Court within section seventeen of the Appellate Jurisdiction Act, 1876, and may be made accordingly.

(9.) The powers of the Court may, as regards land in the County Palatine of Lancaster, be exercised also by the Court of Chancery of the County Palatine; and Rules for regulating proceedings in that Court shall be from time to time made by the Chancellor of the Duchy of Lancaster, with the advice and consent of a Judge of the High Court acting in the Chancery Division, and of the Vice-Chancellor of the County Palatine.

(10.) General Rules and Rules of the Court of Chancery of the County Palatine, under this Act may be made at any time after the passing of this Act, to take effect on or after the commencement of this Act.

70.—(1.) An order of the Court under any statutory or other Orders of
Court con-
clusive.
jurisdiction shall not, as against a purchaser, be invalidated on the ground of want of jurisdiction, or of want of any concurrence, consent, notice, or service, whether the purchaser has notice of any such want or not.

(2.) This section shall have effect with respect to any lease, sale, or other Act under the authority of the Court, and purporting to be in pursuance of the Settled Estates Act, 1877, notwithstanding the exception in section forty of that Act, or to be in pursuance of any former Act repealed by that Act, notwithstanding any exception in such former Act. 40 & 41 Vict.
c. 18, s. 40.

(3.) This section applies to all orders made before or after the commencement of this Act, except any order which has before the commencement of this Act been set aside or determined to be invalid on any ground, and except any order as regards which an action or proceeding is at the commencement of this Act pending for having it set aside or determined to be invalid.

44 & 45 VICT.
c. 41.

XVII.—REPEALS.

REPEALS.
Repeal of enactments in Part III. of second schedule; restriction on all repeals.

71.—(1.) The enactments described in Part III. of the Second Schedule to this Act are hereby repealed.

(2.) The repeal by this Act of any enactment shall not affect the validity or invalidity, or any operation, effect, or consequence, of any instrument executed or made, or of anything done or suffered, before the commencement of this Act, or any action, proceeding, or thing then pending or uncompleted; and every such action, proceeding, and thing may be carried on and completed as if there had been no such repeal in this Act; but this provision shall not be construed as qualifying the provision of this Act relating to section forty of the Settled Estates Act, 1877, or any former Act repealed by that Act.

IRELAND.

XVIII.—IRELAND.

Modifications respecting Ireland.

72.—(1.) In the application of this Act to Ireland the foregoing provisions shall be modified as in this section provided.

(2.) The Court shall be Her Majesty's High Court of Justice in Ireland.

(3.) All matters within the jurisdiction of that Court shall, subject to the Acts regulating that Court, be assigned to the Chancery Division of that Court; but General Rules under this Act may direct that any of those matters be assigned to the Land Judges of that Division.

(4.) The proper office of the Supreme Court of Judicature in Ireland shall be substituted for the central office of the Supreme Court of Judicature.

40 & 41 Vict.
c. 57, s. 69.

(5.) General Rules for purposes of this Act for Ireland shall be deemed Rules of Court within the Supreme Court of Judicature Act (Ireland), 1877, and may be made accordingly, at any time after the passing of this Act, to take effect on or after the commencement of this Act.

Death of bare trustee in-
testate, &c.,
37 & 38 Vict.
c. 78.

73.—(1.) Section five of the Vendor and Purchaser Act, 1874, is hereby repealed from and after the commencement of this Act, as regards cases of death thereafter happening; and section seven of the Vendor and Purchaser Act, 1874, is hereby repealed as from the date at which it came into operation.

(2.) This section extends to Ireland only.

SCHEDULES.

44 & 45 Vict.
c. 41.

THE FIRST SCHEDULE (a).

ACTS AFFECTED.

PART I.

- 1 & 2 Vict. c. 110.—An Act for abolishing arrest on mesne process in civil actions, except in certain cases; for extending the remedies of creditors against the property of debtors; and for amending the laws for the relief of insolvent debtors in England.
- 2 & 3 Vict. c. 11.—An Act for the better protection of purchasers against judgments, Crown debts, *lis pendens*, and fiats in bankruptcy.
- 18 & 19 Vict. c. 15.—An Act for the better protection of purchasers against judgments, Crown debts, cases of *lis pendens*, and life annuities or rent-charges.
- 22 & 23 Vict. c. 35.—An Act to further amend the law of property and to relieve trustees.
- 23 & 24 Vict. c. 38.—An Act to further amend the law of property.
- 23 & 24 Vict. c. 115.—An Act to simplify and amend the practice as to the entry of satisfaction on Crown debts and on judgments.
- 27 & 28 Vict. c. 112.—An Act to amend the law relating to future judgments, statutes, and recognizances.
- 28 & 29 Vict. c. 104.—The Crown Suits, &c. Act, 1865.
- 31 & 32 Vict. c. 54.—The Judgments Extension Act, 1868.

PART II.

- 5 & 6 Will. 4, c. 62.—An Act to repeal an Act of the present session of Parliament, intituled “An Act for the more effectual abolition of oaths and affirmations taken and made in various Departments of the State, and to substitute declarations in lieu thereof; and for the more entire suppression of voluntary and extra-judicial oaths and affidavits;” and to make other provisions for the abolition of unnecessary oaths.

(a) There is no reference to this First Schedule in the body of the Act, nor are there any provisions which affect the scheduled Acts.

44 & 45 Vict.
c. 41.

THE SECOND SCHEDULE.

REPEALS.

A description or citation of a portion of an Act is inclusive of the words, section, or other part, first or last mentioned, or otherwise referred to as forming the beginning or as forming the end of the portion comprised in the description or citation.

PART I.

22 & 23 Vict. c. 35, in part.	An Act to further amend the law of property and to relieve trust- tees Sections four to nine.	} in part; namely—
23 & 24 Vict. c. 126, in part.	The Common Law Procedure Act, 1860 Section two.	

PART II.

15 & 16 Vict. c. 86, in part.	An Act to amend the practice and course of proceeding in the High Court of Chancery Section forty-eight.	} in part; namely—
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PART III.

8 & 9 Vict. c. 119	An Act to facilitate the conveyance of real property.	
23 & 24 Vict. c. 145, in part.	An Act to give to trustees, mortgagees, and others, certain powers now commonly inserted in settlements, mortgages, and wills	} in part; namely—
	Parts II. and III. (sections eleven to thirty).	

THE THIRD SCHEDULE.

STATUTORY MORTGAGE.

PART I.

Deed of Statutory Mortgage.

THIS INDENTURE made by way of statutory mortgage the
day of 1882, between A. of [etc.], of the one part, and M. of
[etc.], of the other part: WITNESSETH, that in consideration of the sum
of £ now paid to A. by M., of which sum A. hereby acknowledges
the receipt, A., as mortgagor and as beneficial owner, hereby conveys to M.

All that [&c.], To hold to and to the use of *M.* in fee simple for securing payment on the day of 1883, of the principal sum of £ as the mortgage money, with interest thereon, at the rate of [four] per centum per annum. 44 & 45 VICT.
c. 41.

In witness, &c.

*. * *Variations in this and subsequent forms to be made, if required, for leasehold land or other matter.*

PART II.

(A.)

Deed of Statutory Transfer, Mortgagor not joining.

THIS INDENTURE made by way of statutory transfer of mortgage the day of 1883, between *M.* of [&c.], of the one part, and *T.* of [&c.], of the other part, supplemental to an indenture made by way of statutory mortgage dated the day of 1882, and made between [&c.]: WITNESSETH, that in consideration of the sum of £ now paid to *M.* by *T.*, being the aggregate amount of £ mortgage money and £ interest due in respect of the said mortgage, of which sum *M.* hereby acknowledges the receipt, *M.*, as mortgagee, hereby conveys and transfers to *T.* the benefit of the said mortgage.

In witness, &c.

(B.)

Deed of Statutory Transfer, a Covenantor joining.

THIS INDENTURE made by way of statutory transfer of mortgage the day of 1883, between *A.* of [&c.], of the first part, *B.* of [&c.], of the second part, and *C.* of [&c.], of the third part, supplemental to an indenture made by way of statutory mortgage dated the day of 1882, and made between [&c.], WITNESSETH, that in consideration of the sum of £ now paid to *A.* by *C.*, being the mortgage money due in respect of the said mortgage, no interest being now due and payable thereon, of which sum *A.* hereby acknowledges the receipt, *A.*, as mortgagee, with the concurrence of *B.*, who joins herein as covenantor, hereby conveys and transfers to *C.* the benefit of the said mortgage.

In witness, &c.

(C.)

Statutory Transfer and Statutory Mortgage combined.

THIS INDENTURE made by way of statutory transfer of mortgage and statutory mortgage the day of 1883, between *A.* of [&c.], of the first part, *B.* of [&c.], of the second part, and *C.* of [&c.], of the third part, supplemental to an indenture made by way of statutory

44 & 45 VICT. c. 41. mortgage dated the day of 1882, and made between
[&c.]: WHEREAS the principal sum of £ only remains due in
respect of the said mortgage, as the mortgage money and no interest is
now due and payable thereon: AND WHEREAS B. is seised in fee simple
of the land comprised in the said mortgage subject to that mortgage.
Now THIS INDENTURE WITNESSETH, that in consideration of the sum of
£ now paid to A. by C., of which sum A. hereby acknowledges
the receipt, and B. hereby acknowledges the payment and receipt as
aforesaid,* A., as mortgagee, hereby conveys and transfers to C. the
benefit of the said mortgage: AND THIS INDENTURE ALSO WITNESSETH,
that for the same consideration, A., as mortgagee and according to his
estate, and by direction of B., hereby conveys, and B., as beneficial
owner, hereby conveys and confirms to C., All that [&c.], To hold to and
to the use of C. in fee simple for securing payment on the
day of 1882, of † the sum of £ as the mortgage money,
with interest thereon at the rate of [four] per centum per annum.

In witness, &c.

[Or, in case of further advance, after aforesaid at * insert, and also in
consideration of the further sum of £ now paid by C. to B., of
which sum B. hereby acknowledges the receipt, and after of at † insert the
sums of £ and £ , making together]

. Variations to be made, as required, in case of the deed being made by
indorsement, or in respect of any other thing.

PART III.

Deed of Statutory Re-conveyance of Mortgage.

THIS INDENTURE made by way of statutory re-conveyance of mortgage
the day of 1884, between C. of [&c.], of the one
part, and B. of [&c.], of the other part, supplemental to an indenture made
by way of statutory transfer of mortgage dated the day of
1883, and made between [&c.], WITNESSETH, that in con-
sideration of all principal money and interest due under that indenture
having been paid, of which principal and interest C. hereby acknowledges
the receipt, C., as mortgagee, hereby conveys to B. all the lands and
hereditaments now vested in C. under the said indenture, To hold and to
the use of B. in fee simple, discharged from all principal money and
interest secured by and from all claims and demands under the said
indenture.

In witness, &c.

. Variations as noted above.

THE FOURTH SCHEDULE.

44 & 45 VICT.
c. 41.

SHORT FORMS OF DEEDS.

I.—*Mortgage.*

THIS INDENTURE OF MORTGAGE made the day of 1882, between *A.* of [*&c.*], of the one part, and *B.* of [*&c.*], and *C.* of [*&c.*], of the other part, WITNESSETH, that in consideration of the sum of £ paid to *A.* by *B.* and *C.* out of money belonging to them on a joint account, of which sum *A.* hereby acknowledges the receipt, *A.* hereby covenants with *B.* and *C.* to pay to them on the day of 1882, the sum of £ with interest thereon in the meantime at the rate of [*four*] per centum per annum, and also as long after that day as any principal money remains due under this mortgage, to pay to *B.* and *C.* interest thereon at the same rate by equal half-yearly payments on the day of and the day of : AND THIS INDENTURE ALSO WITNESSETH, that for the same consideration *A.* as beneficial owner, hereby conveys to *B.* and *C.* All that [*&c.*]. To hold to and to the use of *B.* and *C.* in fee simple, subject to the proviso for redemption following (namely), that if *A.*, or any person claiming under him shall, on the day of 1882, pay to *B.* and *C.* the sum of £ , and interest thereon, at the rate aforesaid, then *B.* and *C.*, or the persons claiming under them, will, at the request and cost of *A.*, or the persons claiming under him, re-convey the premises to *A.*, or the persons claiming under him: AND *A.* hereby covenants with *B.* as follows [*here add covenant as to fire insurance or other special covenant required*].

In witness, &c.

II.—*Further Charge.*

THIS INDENTURE made the day of 18 , between [*the same parties as the foregoing mortgage*], and supplemental to an indenture of mortgage dated the day of 18 , and made between the same parties for securing the sum of £ and interest at [*four*] per centum per annum on property at [*&c.*], WITNESSETH, that in consideration of the further sum of £ paid to *A.* by *B.* and *C.* out of money belonging to them on a joint account [*add receipt and covenant as in the foregoing mortgage*], and further, that all the property comprised in the before-mentioned indenture of mortgage shall stand charged with the payment to *B.* and *C.* of the sum of £ and the interest thereon hereinbefore covenanted to be paid, as well as the sum of £ and interest secured by the same indenture.

In witness, &c.

44 & 45 VICT.
c. 41.

III.—*Conveyance on Sale.*

THIS INDENTURE made the day of 1883, between *A.* of [*&c.*], of the first part, *B.* of [*&c.*], and *C.* of [*&c.*], of the second part, and *M.* of [*&c.*], of the third part: WHEREAS by an indenture dated [*&c.*], and made between [*&c.*], the lands hereinafter mentioned were conveyed by *A.* to *B.* and *C.* in fee simple, by way of mortgage for securing £ and interest, and by a supplemental indenture dated [*&c.*], and made between the same parties, those lands were charged by *A.* with the payment to *B.* and *C.* of the further sum of £ and interest thereon: AND WHEREAS a principal sum of £ remains due under the two before-mentioned indentures, but all interest thereon has been paid, as *B.* and *C.* hereby acknowledge: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £ paid by the direction of *A.* to *B.* and *C.*, and of the sum of £ paid to *A.*, those two sums making together the total sum of £ paid by *M.* for the purchase of the fee simple of the lands hereinafter mentioned, of which sum of £ *B.* and *C.* hereby acknowledge the receipt, and of which total sum of £ *A.* hereby acknowledges the payment and receipt in manner before-mentioned, *B.* and *C.* as mortgagees, and by the direction of *A.* as beneficial owner, hereby convey, and *A.*, as beneficial owner, hereby conveys and confirms to *M.*, All that [*&c.*], To hold to and to the use of *M.* in fee simple, discharged from all money secured by and from all claims under the before-mentioned indentures. [*Add, if required: And A. hereby acknowledges the right of M. to production of the documents of title mentioned in the schedule hereto, and to delivery of copies thereof, and hereby undertakes for the safe custody thereof.*]

In witness, &c.

[The Schedule above referred to.]

To contain list of documents retained by A.

IV.—*Marriage Settlement.*

THIS INDENTURE made the day of 1882, between *John M.* of [*&c.*], of the first part, *Jane S.* of [*&c.*], of the second part, and *X.* of [*&c.*], and *Y.* of [*&c.*], of the third part, WITNESSETH, that in consideration of the intended marriage between *John M.* and *Jane S.*, *John M.* as settlor hereby conveys to *X.* and *Y.* All that [*&c.*], To hold to *X.* and *Y.* in fee simple, to the use of *John M.* in fee simple, until the marriage, and after the marriage to the use of *John M.* during his life without impeachment of waste, with remainder after his death, to the use that *Jane S.* if she survives him may receive during the rest of her life a yearly jointure rent-charge of £ , to commence from his death, and to be paid by equal half-yearly payments, the first thereof to be made at the end of six calendar months from his death if she is then living, or, if not, a proportional part to be paid at her death and subject to the before-mentioned rent-charge to the use of *X.* and *Y.* for a term of five hundred

years, without impeachment of waste, on the trusts hereinafter declared, and subject thereto to the use of the first and other sons of *John M.* and *Jane S.* successively according to seniority in tail male with remainder 44 & 45 VICT.
c. 41.
[insert here, if thought desirable, to the use of the same first and other sons successively according to seniority in tail with remainder] to the use of all the daughters of *John M.* and *Jane S.* in equal shares as tenants in common in tail, with cross remainders between them in tail, with remainder to the use of *John M.* in fee simple. [Insert trusts of term of 500 years for raising portions; also, if required, power to charge jointure and portions on a future marriage; also powers of sale, exchange, and partition, and other powers and provisions, if and as desired.]

In witness, &c.

CONVEYANCING ACT, 1882.

45 & 46 VICT. c. 39.

45 & 46 VICT.
c. 39.

*An Act for further improving the Practice of Conveyancing;
and for other purposes.* [10th August, 1882.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

Short titles;
commence-
ment; extent;
interpreta-
tion.

44 & 45 Vict.
c. 41.

Preliminary.

1.—(1.) This Act may be cited as the Conveyancing Act, 1882; and the Conveyancing and Law of Property Act, 1881 (in this Act referred to as the Conveyancing Act of 1881), and this Act may be cited together as the Conveyancing Acts, 1881, 1882.

(2.) This Act, except where it is otherwise expressed, shall commence and take effect from and immediately after the thirty-first day of December, one thousand eight hundred and eighty-two, which time is in this Act referred to as the commencement of this Act.

(3.) This Act does not extend to Scotland.

(4.) In this Act and in the Schedule thereto—

(i.) Property includes real and personal property, and any debt, and any thing in action, and any other right or interest in the nature of property, whether in possession or not:

(ii.) Purchaser includes a lessee or mortgagee, or an intending purchaser, lessee, or mortgagee, or other person, who, for valuable consideration, takes or deals for property, and purchase has a meaning corresponding with that of purchaser:

(iii.) The Act of the session of the third and fourth years of King William the Fourth (chapter seventy-four) "for the abolition of Fines and Recoveries, and for the substitution of more simple modes of Assurance" is referred to as the Fines and Recoveries Act; and the Act of the session of the fourth and fifth years of King William the Fourth (chapter ninety-two) "for the abolition of Fines and Recoveries, and for the substitution of more simple modes of Assurance in Ireland" is referred to as the Fines and Recoveries (Ireland) Act.

45 & 46 Vict.
c. 39.

Preliminary.

3 & 4 Will. 4,
c. 74.

4 & 5 Will. 4,
c. 92.

Searches.

2.—(1.) Where any person requires, for purposes of this section, search to be made in the Central Office of the Supreme Court of Judicature for entries of judgments, deeds, or other matters or documents, whereof entries are required or allowed to be made in that office by any Act described in Part I. of the First Schedule to the Conveyancing Act of 1881, or by any other Act, he may deliver in the office a requisition in that behalf, referring to this section.

(2.) Thereupon the proper officer shall diligently make the search required, and shall make and file in the office a certificate setting forth the result thereof; and office copies of that certificate shall be issued on requisition, and an office copy shall be evidence of the certificate.

(3.) In favour of a purchaser, as against persons interested under or in respect of judgments, deeds, or other matters or documents, whereof entries are required or allowed as aforesaid, the certificate, according to the tenour thereof, shall be conclusive, affirmatively or negatively, as the case may be.

(4.) Every requisition under this section shall be in writing, signed by the person making the same, specifying the name against which he desires search to be made, or in relation to which he requires an office copy certificate of result of search, and other sufficient particulars; and the person making any such requisition shall not be entitled to a search, or an office copy certificate, until he has satisfied the proper officer that the same is required for the purposes of this section.

(5.) General Rules shall be made for purposes of this section, prescribing forms and contents of requisitions and certificates,

Searches.

Official negative and other certificates of searches for judgments, Crown debts, &c.

45 & 46 Vict.
c. 39.

Searches.

39 & 40 Vict.
c. 59.
44 & 45 Vict.
c. 68.

and regulating the practice of the office, and prescribing, with the concurrence of the Commissioners of Her Majesty's Treasury, the fees to be taken therein; which Rules shall be deemed Rules of Court within section seventeen of the Appellate Jurisdiction Act, 1876, as altered by section nineteen of the Supreme Court of Judicature Act, 1881, and may be made, at any time after the passing of this Act, to take effect on or after the commencement of this Act.

(6.) If any officer, clerk, or person employed in the office commits, or is party or privy to, any act of fraud or collusion, or is wilfully negligent in the making of or otherwise in relation to any certificate or office copy under this section, he shall be guilty of a misdemeanour.

(7.) Nothing in this section or in any Rule made thereunder shall take away, abridge, or prejudicially affect any right which any person may have independently of this section to make any search in the office; and every such search may be made as if this section or any such Rule had not been enacted or made.

(8.) Where a solicitor obtains an office copy certificate of result of search under this section, he shall not be answerable in respect of any loss that may arise from error in the certificate.

(9.) Where the solicitor is acting for trustees, executors, agents, or other persons in a fiduciary position, those persons also shall not be so answerable.

(10.) Where such persons obtain such an office copy without a solicitor, they shall also be protected in like manner.

3 & 4 Will. 4,
c. 74.

(11.) Nothing in this section applies to deeds inrolled under the Fines and Recoveries Act, or under any other Act, or under any statutory Rule.

(12.) This section does not extend to Ireland.

Notice.

Restriction on
constructive
notice.

Notice.

3.—(1.) A purchaser shall not be prejudicially affected by notice of any instrument, fact, or thing, unless—

(i.) It is within his own knowledge, or would have come to his knowledge if such inquiries and inspections had been made as ought reasonably to have been made by him: or

(ii.) In the same transaction with respect to which a question of notice to the purchaser arises, it has come to the knowledge of his counsel, as such, or of his solicitor, or other agent, as such, or would have come to the knowledge of his solicitor, or other agent, as such, if such inquiries and inspections had been made as ought reasonably to have been made by the solicitor or other agent.

45 & 46 Vict.
c. 39.

Notice.

(2.) This section shall not exempt a purchaser from any liability under, or any obligation to perform or observe, any covenant, condition, provision, or restriction contained in any instrument under which his title is derived, mediately or immediately; and such liability or obligation may be enforced in the same manner and to the same extent as if this section had not been enacted.

(3.) A purchaser shall not by reason of anything in this section be affected by notice in any case where he would not have been so affected if this section had not been enacted.

(4.) This section applies to purchases made either before or after the commencement of this Act; save that, where an action is pending at the commencement of this Act, the rights of the parties shall not be affected by this section.

Leases.

Leases.

4.—(1.) Where a lease is made under a power contained in a settlement, will, Act of Parliament, or other instrument, any preliminary contract for or relating to the lease shall not, for the purpose of the deduction of title to an intended assign, form part of the title, or evidence of the title, to the lease.

Contract for
lease not part
of title to
lease.

(2.) This section applies to leases made either before or after the commencement of this Act.

Separate Trustees.

Separate Trustees.

5.—(1.) On an appointment of new trustees, a separate set of trustees may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property; or, if only one trustee was originally appointed, then one separate trustee may be so appointed for the first-mentioned part.

Appointment
of separate sets
of trustees.

(2.) This section applies to trusts created either before or after the commencement of this Act.

45 & 46 VICT.
c. 39.

Powers.

Disclaimer
of power by
trustees.

6.—(1.) A person to whom any power, whether coupled with an interest or not, is given, may, by deed, disclaim the power; and, after disclaimer, shall not be capable of exercising or joining in the exercise of the power.

(2.) On such disclaimer, the power may be exercised by the other or others, or the survivors or survivor of the others, of the persons to whom the power is given, unless the contrary is expressed in the instrument creating the power.

(3.) This section applies to powers created by instruments coming into operation either before or after the commencement of this Act.

*Married
Women.*

Acknowledg-
ment of deeds
by married
women.

Married Women.

7.—(1.) In section seventy-nine of the Fines and Recoveries Act, and section seventy of the Fines and Recoveries (Ireland) Act, there shall, by virtue of this Act, be substituted for the words "two of the perpetual commissioners, or two special commissioners," the words "one of the perpetual commissioners, or one special commissioner;" and in section eighty-three of the Fines and Recoveries Act, and section seventy-four of the Fines and Recoveries (Ireland) Act, there shall, by virtue of this Act, be substituted for the word "persons" the word "person," and for the word "commissioners" the words "a commissioner;" and all other provisions of those Acts, and all other enactments having reference in any manner to the sections aforesaid, shall be read and have effect accordingly.

(2.) Where the memorandum of acknowledgment by a married woman of a deed purports to be signed by a person authorized to take the acknowledgment, the deed shall, as regards the execution thereof by the married woman, take effect at the time of acknowledgment, and shall be conclusively taken to have been duly acknowledged.

(3.) A deed acknowledged before or after the commencement of this Act by a married woman, before a judge of the High Court of Justice in England or Ireland, or before a judge of a county court in England, or before a chairman in Ireland, or before a perpetual commissioner or a special commissioner, shall

not be impeached or impeachable by reason only that such judge, chairman, or commissioner was interested or concerned either as a party, or as solicitor, or clerk to the solicitor for one of the parties, or otherwise, in the transaction giving occasion for the acknowledgment; and General Rules shall be made for preventing any person interested or concerned as aforesaid from taking an acknowledgment: but no such Rule shall make invalid any acknowledgment; and those Rules shall, as regards England, be deemed Rules of Court within section seventeen of the Appellate Jurisdiction Act, 1876, as altered by section nineteen of the Supreme Court of Judicature Act, 1881, and shall, as regards Ireland, be deemed Rules of Court within the Supreme Court of Judicature Act (Ireland), 1877, and may be made accordingly, for England and Ireland respectively, at any time after the passing of this Act, to take effect on or after the commencement of this Act.

45 & 46 Vict.
c. 39.

*Married
Women.*

39 & 40 Vict.
c. 59.
44 & 45 Vict.
c. 68.

40 & 41 Vict.
c. 57.

(4.) The enactments described in the schedule to this Act are hereby repealed.

(5.) The foregoing provisions of this section, including the repeal therein, apply only to the execution of deeds by married women after the commencement of this Act.

(6.) Notwithstanding the repeal or any other thing in this section, the certificate, if not lodged before the commencement of this Act, of the taking of an acknowledgment by a married woman of a deed executed before the commencement of this Act, with any affidavit relating thereto, shall be lodged, examined, and filed in the like manner and with the like effects and consequences as if this section had not been enacted.

(7.) There shall continue to be kept in the proper office of the Supreme Court of Judicature an index to all certificates of acknowledgments of deeds by married women lodged therein, before or after the commencement of this Act, containing the names of the married women and their husbands, alphabetically arranged, and the dates of the certificates and of the deeds to which they respectively relate, and other particulars found convenient; and every such certificate lodged after the commencement of this Act shall be entered in the index as soon as may be after the certificate is filed.

(8.) An office copy of any such certificate filed before or after the commencement of this Act shall be delivered to any person

45 & 46 VICT.
c. 39.

Powers.

Disclaimer
of power by
trustees.

6.—(1.) A person to whom any power, whether coupled with an interest or not, is given, may, by deed, disclaim the power; and, after disclaimer, shall not be capable of exercising or joining in the exercise of the power.

(2.) On such disclaimer, the power may be exercised by the other or others, or the survivors or survivor of the others, of the persons to whom the power is given, unless the contrary is expressed in the instrument creating the power.

(3.) This section applies to powers created by instruments coming into operation either before or after the commencement of this Act.

*Married
Women.*

Acknowledg-
ment of deeds
by married
women.

Married Women.

7.—(1.) In section seventy-nine of the Fines and Recoveries Act, and section seventy of the Fines and Recoveries (Ireland) Act, there shall, by virtue of this Act, be substituted for the words "two of the perpetual commissioners, or two special commissioners," the words "one of the perpetual commissioners, or one special commissioner;" and in section eighty-three of the Fines and Recoveries Act, and section seventy-four of the Fines and Recoveries (Ireland) Act, there shall, by virtue of this Act, be substituted for the word "persons" the word "person," and for the word "commissioners" the words "a commissioner;" and all other provisions of those Acts, and all other enactments having reference in any manner to the sections aforesaid, shall be read and have effect accordingly.

(2.) Where the memorandum of acknowledgment by a married woman of a deed purports to be signed by a person authorized to take the acknowledgment, the deed shall, as regards the execution thereof by the married woman, take effect at the time of acknowledgment, and shall be conclusively taken to have been duly acknowledged.

(3.) A deed acknowledged before or after the commencement of this Act by a married woman, before a judge of the High Court of Justice in England or Ireland, or before a judge of a county court in England, or before a chairman in Ireland, or before a perpetual commissioner or a special commissioner, shall

not be impeached or impeachable by reason only that such judge, chairman, or commissioner was interested or concerned either as a party, or as solicitor, or clerk to the solicitor for one of the parties, or otherwise, in the transaction giving occasion for the acknowledgment; and General Rules shall be made for preventing any person interested or concerned as aforesaid from taking an acknowledgment: but no such Rule shall make invalid any acknowledgment; and those Rules shall, as regards England, be deemed Rules of Court within section seventeen of the Appellate Jurisdiction Act, 1876, as altered by section nineteen of the Supreme Court of Judicature Act, 1881, and shall, as regards Ireland, be deemed Rules of Court within the Supreme Court of Judicature Act (Ireland), 1877, and may be made accordingly, for England and Ireland respectively, at any time after the passing of this Act, to take effect on or after the commencement of this Act.

45 & 46 Vict.
c. 39.

*Married
Women.*

39 & 40 Vict.
c. 59.
44 & 45 Vict.
c. 68.

40 & 41 Vict.
c. 57.

(4.) The enactments described in the schedule to this Act are hereby repealed.

(5.) The foregoing provisions of this section, including the repeal therein, apply only to the execution of deeds by married women after the commencement of this Act.

(6.) Notwithstanding the repeal or any other thing in this section, the certificate, if not lodged before the commencement of this Act, of the taking of an acknowledgment by a married woman of a deed executed before the commencement of this Act, with any affidavit relating thereto, shall be lodged, examined, and filed in the like manner and with the like effects and consequences as if this section had not been enacted.

(7.) There shall continue to be kept in the proper office of the Supreme Court of Judicature an index to all certificates of acknowledgments of deeds by married women lodged therein, before or after the commencement of this Act, containing the names of the married women and their husbands, alphabetically arranged, and the dates of the certificates and of the deeds to which they respectively relate, and other particulars found convenient; and every such certificate lodged after the commencement of this Act shall be entered in the index as soon as may be after the certificate is filed.

(8.) An office copy of any such certificate filed before or after the commencement of this Act shall be delivered to any person

45 & 46 VICT.
c. 39.

*Married
Women.*

applying for the same; and every such office copy shall be received as evidence of the acknowledgment of the deed to which the certificate refers.

*Powers of
Attorney.*

Effect of power
of attorney,
for value,
made abso-
lutely irre-
vocable.

Powers of Attorney.

8.—(1.) If a power of attorney, given for valuable consideration, is in the instrument creating the power expressed to be irrevocable, then, in favour of a purchaser—

(i.) The power shall not be revoked at any time, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power: and

(ii.) Any act done at any time by the donee of the power, in pursuance of the power, shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power, had not been done or happened: and

(iii.) Neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice of anything done by the donor of the power without the concurrence of the donee of the power, or of the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power.

(2.) This section applies only to powers of attorney created by instruments executed after the commencement of this Act.

Effect of power
of attorney,
for value or
not, made
irrevocable
for fixed time.

9.—(1.) If a power of attorney, whether given for valuable consideration or not, is in the instrument creating the power expressed to be irrevocable for a fixed time therein specified, not exceeding one year from the date of the instrument, then, in favour of a purchaser—

(i.) The power shall not be revoked, for and during that fixed time, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power: and

(ii.) Any act done within that fixed time, by the donee of the power, in pursuance of the power, shall be as valid as if any-

thing done by the donor of the power without the concurrence of the donee of the power, or the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power, had not been done or happened: and

45 & 46 Vict.
c. 39.

*Powers of
Attorney.*

(iii.) Neither the donee of the power, nor the purchaser, shall at any time be prejudicially affected by notice either during or after that fixed time of anything done by the donor of the power during that fixed time, without the concurrence of the donee of the power, or of the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power within that fixed time.

(2.) This section applies only to powers of attorney created by instruments executed after the commencement of this Act.

Executory Limitations.

*Executory
Limitations.*

10.—(1.) Where there is a person entitled to land for an estate in fee, or for a term of years absolute or determinable on life, or for term of life, with an executory limitation over on default or failure of all or any of his issue, whether within or at any specified period of time or not, that executory limitation shall be or become void and incapable of taking effect, if and as soon as there is living any issue who has attained the age of twenty-one years, of the class on default or failure whereof the limitation over was to take effect.

Restriction on
executory
limitations.

(2.) This section applies only where the executory limitation is contained in an instrument coming into operation after the commencement of this Act.

Long Terms.

Long Terms.

11. Section sixty-five of the Conveyancing Act of 1881 shall apply to and include, and shall be deemed to have always applied to and included, every such term as in that section mentioned, whether having as the immediate reversion thereon the freehold or not: but not—

Amendment
of enactment
respecting
long terms.

(i.) Any term liable to be determined by re-entry for condition broken; or

(ii.) Any term created by sub-demise out of a superior term, itself incapable of being enlarged into a fee simple.

"This deed was this day produced before me and acknowledged by — therein named to be her act and deed [*or their several acts and deeds*] previous to which acknowledgment [*or acknowledgments*] the said — was [*or were*] examined by me separately and apart from her husband [*or their respective husbands*] touching her [*or their*] knowledge of the contents of the said deed and her [*or their*] consent thereto and [*each of them*] declared the same to be freely and voluntarily executed by her."

4. When an acknowledgment is taken by any person other than a judge, the following declaration shall be added to the memorandum of acknowledgment:—

"And I declare that I am not interested or concerned either as a party or as a solicitor or clerk to the solicitor for one of the parties or otherwise in the transaction giving occasion for the said acknowledgment."

5. A memorandum of acknowledgment purporting to be signed according to any of the following forms shall be deemed to be a memorandum purporting to be signed by a person authorised to take the acknowledgment:—

(Signed) *A.B.*

A Judge of the High Court of Justice in England,
or a Judge of the County Court of _____,
or a perpetual Commissioner for taking acknowledgments
of deeds by married women,
or the special Commissioner appointed to take the afore-
said acknowledgment.

But this rule is not to derogate from the effect of any memorandum purporting to be signed by a person authorised to take the acknowledgment, though not signed in accordance with any of the above forms.

6. Nothing in the five preceding rules contained shall make invalid any acknowledgment which would have been valid if these rules had not been enacted.

7. Every Commission appointing a special Commissioner to take an acknowledgment by a married woman shall be returned to the office of the registrar of certificates of acknowledgments of deeds by married women, and shall be there filed. An index shall be prepared and kept in the said office, giving the names

and addresses of the married women named in all such commissions filed in the said office after the 31st December, 1882. The same rules shall apply to searches in the index so to be prepared as to searches in the other indexes and registers kept in the Central Office.

8. The costs to be allowed to solicitors in respect of the matters hereinafter mentioned, when not otherwise regulated by the general orders in force for the time being under the Solicitors Remuneration Act, 1881, or by special agreement, shall be as follows; anything in the Rules of the Supreme Court as to costs, dated the 12th August, 1875, to the contrary notwithstanding :—

Charges under the Act 3 & 4 Will. IV. c. 74 (the Fines and Recoveries Act).

£ s. d.

For the indorsements on deeds required by the Fines and Recoveries Act, to be entered on the Court Rolls of Manors of the memorandum of production and memorandum of entry on Court Rolls, to be signed by the Lord Steward or Deputy Steward, each indorsement of memorandum 5s., together 0 10 0

For the entries on the Court Rolls of deeds and the indorsements thereon, at per folio of 72 words . . . 0 0 6

For taking the consent of each protector of settlement of lands 0 13 4

For taking the surrender by each tenant in tail of lands 0 13 4

For entries of such surrenders or the memorandums thereof in the Court Rolls, at per folio of 72 words . 0 0 6

9. The following Rules and Orders are hereby repealed, except as to certificates not lodged before the 1st January, 1883, of acknowledgments by married women of deeds executed before the 1st January, 1883, and the affidavits relating thereto :—

The General Rules of the Court of Common Pleas, Hil. Term, 1834.

The General Rules of the Court of Common Pleas, Trin. Term, 1834.

The General Order of the Court of Common Pleas, dated the 24th November, 1862.

The General Order of the Court of Common Pleas, dated the 13th January, 1863.

10. These Rules shall take effect from and after the 31st December, 1882.

RULES

UNDER SECTION 2 OF THE CONVEYANCING ACT, 1882.



1. Every requisition for an official search shall state the name and address of the person requiring the search to be made. Every requisition and certificate shall be filed in the office where the search was made.

2. Every person requiring an official search to be made pursuant to section 2 of the Conveyancing Act, 1882, shall deliver to the officer a declaration according to the Forms I. and II. in the Appendix, purporting to be signed by the person requiring the search to be made, or by a solicitor, which declaration may be accepted by the officer as sufficient evidence that the search is required for the purposes of the said section. The declaration may be made in the requisition, or in a separate document.

3. Requisitions for searches under section 2 of the Conveyancing Act, 1882, shall be in the Forms III. to VI. in the Appendix, and the certificates of the results of such searches shall be in the Forms VII. to X., with such modifications as the circumstances may require.

4. Where a certificate setting forth the result of a search in any name has been issued, and it is desired that the search be continued in that name, to a date not more than one calendar month subsequent to the date of the certificate, a requisition in writing in the Form XI. in the Appendix may be left with the proper officer, who shall cause the search to be continued, and the result of the continued search shall be indorsed on the original certificate and upon any office copy thereof which may have been issued, if produced to the officer for that purpose. The indorsement shall be in the Form XII. in the Appendix with such modifications as circumstances require.

5. Every person shall, upon payment of the prescribed fee, be entitled to have a copy of the whole or any part of any deed or document enrolled in the Enrolment Department of the Central Office.

6. An alphabetical index of the names of the grantors of all powers of attorney filed under section 48 of the Conveyancing and Law of Property Act, 1881, shall be prepared and kept by the proper officer, and any person may search the index upon payment of the prescribed fee. No person shall take copies of or extracts from any power of attorney or other document filed under that section and produced for his inspection. All copies and extracts which may be required shall be made by the office.

APPENDIX TO THE RULES.

FORM I.

DECLARATION BY SEPARATE INSTRUMENT AS TO PURPOSES OF SEARCH.

Supreme Court of Judicature,
Central Office.

To the Clerk of Enrolments,
or The Registrar of
Royal Courts of Justice,
London.

In the matter of *A.B.* and *C.D.*

I declare that the search (*or searches*) in the name (*or names*) of
required to be made by the requisition for search, dated the is (*or*
are) required for the purposes of a sale (*or mortgage, or lease, or as the*
case may be), by *A.B.* to *C.D.*

Signature,)
Address, and)
Description.)
Dated .

FORM II.

DECLARATION AS TO PURPOSES OF SEARCH CONTAINED IN THE REQUISITION.

I declare that the above-mentioned search is required for the purposes
of a sale (*or mortgage, or lease, or as the case may be*), by *A.B.* to *C.D.*

FORM III.

REQUISITION FOR SEARCH IN THE ENROLMENT OFFICE, UNDER THE
CONVEYANCING ACT, 1882, s. 2.

Supreme Court of Judicature,
Central Office.

Requisition for Search.

To the Clerk of Enrolments,
Royal Courts of Justice,
London.

In the matter of *A.B.* and *C.D.*

Pursuant to sect. 2 of the Conveyancing Act, 1882, search for deeds
and other documents enrolled during the period from 18 to
18 , both inclusive, in the following name (or names).

Surname.	Christian Name or Names.	Usual or last known Place of Abode.	Title, Trade, or Profession.

(Add Declaration, Form II.)

(State if an office copy of the certificate is desired, and whether it is to be
sent by post or called for.)

Signature, address, and
description of person
requiring the search. }

Dated

FORM IV.

**REQUISITION FOR SEARCH IN THE BILLS OF SALE DEPARTMENT UNDER
THE CONVEYANCING ACT, 1882, s. 2.**

Supreme Court of Judicature,
Central Office.

Requisition for Search.

To the Registrar of Bills of Sale,
Royal Courts of Justice,
London.

In the matter of *A.B.* and *C.D.*

Pursuant to sect. 2 of the Conveyancing Act, 1882, search for instruments registered or re-registered as bills of sale during the period from 18 to 18 , both inclusive, in the following name (or names).

Surname.	Christian Name or Names.	Usual or last known Place of Abode.	Title, Trade, or Profession.

(Add Declaration, Form II.)

(State if an office copy of the certificate is desired, and whether it is to be sent by post or called for.)

Signature, address, and
description of person
requiring the search. }

Dated .

FORM V.

REQUISITION FOR SEARCH IN THE REGISTRY OF CERTIFICATES OF
ACKNOWLEDGMENTS OF DEEDS BY MARRIED WOMEN UNDER THE
CONVEYANCING ACT, 1882, s. 2.

Supreme Court of Judicature,
Central Office.

Requisition for Search.

To the Registrar of Certificates of Acknowledgments of Deeds by Married
Women,
Royal Courts of Justice,
London.

In the matter of *A.B.* and *C.D.*

Pursuant to sect. 2 of the Conveyancing Act, 1882, search for certi-
ficates of Acknowledgments of Deeds by Married Women during the period
from 18 to 18 both inclusive, according to the
particulars mentioned in the schedule hereto.

THE SCHEDULE.

Surname.	Christian Name or Names of Wife and Husband.	Date of Certificate if the Search relates to a Particular Certificate.	Date of Deed, if the Search relates to a Particular Deed.	County, Parish, or Place in which the Property is situate, or other description of the Property.

(Add Declaration, Form II.)

(State if an office copy of the certificate is desired, and whether it is to be
sent by post or called for.)

Signature, address, and }
description of person }
requiring the search. }

Dated

Rule 7.—In any case of modification or cancellation of entries on the register, such evidence in respect thereof as the registrar shall from time to time think necessary shall be required.

Rule 8.—These rules may be cited as “The Land Charges Rules, 1889.”

January 1, 1889.

THE SCHEDULE—FORMS.

FORM I.—APPLICATION TO REGISTER A WRIT OR ORDER.

Register of Writs and Orders.

Land Charges Registration and Searches Act, 1888.

Office of Land Registry.

Filed for registration the _____ day of _____, 18—. <div style="text-align: right;">By _____</div> of _____ (Signed) _____ <div style="text-align: right;">Applicant [or Solicitor].</div>	A Writ [or Order] of the _____ Division of the High Court. Dated the _____ day of _____, 18—. TITLE OF THE ACTION OR MATTER. _____ <div style="text-align: right;">Plaintiff.</div> _____ <div style="text-align: right;">Defendant.</div>
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Name of the Person whose Estate is affected.

Surname.	Christian Name or Names.	Address.	Title, Trade, or Profession.

FORM II.—APPLICATION TO REGISTER A DEED OF ARRANGEMENT.

Register of Deeds of Arrangement.

Land Charges Registration and Searches Act, 1888.

Office of Land Registry.

Filed for registration the _____ day of _____, 18—. <div style="text-align: right;">By _____</div> of _____ (Signed) _____ <div style="text-align: right;">Applicant [or Solicitor].</div>	Date of the Deed _____ PARTIES TO THE DEED.* _____ _____ _____
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* Names only; and where the creditors are numerous, enter the names of the first three, adding “and others.”

Name of the Person whose Estate is affected.

Surname.	Christian Name or Names.	Address.	Title, Trade, or Profession.

APPENDIX.

FORM III.

APPLICATION TO REGISTER A LAND CHARGE.

*Register of Land Charges.**Land Charges Registration and Searches Act, 1888.*

Office of Land Registry.

Filed for registration the _____ day of _____, 18—.	A charge upon lands in the parish(es) of _____.
By _____ of _____ (Signed) _____ Applicant [or Solicitor].	Dated the _____ day of _____, 18—. By virtue of the statute _____.

The Person in whose Name the Registration is to be made.

Surname.	Christian Name.	Address.	Title, Trade, or Profession.	Capacity.*

* Here state whether beneficially entitled to the first estate of freehold, or to a lease for lives or life, or for a term of years, or whether tenant on the Court Rolls of the Manor.

FORM IV.

DECLARATION IN SUPPORT OF AN APPLICATION TO REGISTER.

I, _____, of _____, solemnly and sincerely declare that the writ [order, deed, charge], whereof the particulars are set forth in the application for registration thereof, marked "A," and now produced and shown to me, was actually issued [made, executed] at the time and in the manner in the said application mentioned, and that the particulars set forth therein are to the best of my knowledge, information, and belief, true.

And I make, &c.

FORM V.

APPLICATION FOR AN OFFICIAL SEARCH.

Application for Official Search.

N.B.—This form may be filled in for a future day not less than three days subsequent to its arrival in the office.

Land Charges Registration and Searches Act, 1888.

Office of Land Registry.

Please search the Register of Writs and Orders for the period of five years ending the _____ of _____, 18 _____ inclusive. [Deeds of Arrangement from the _____ of _____, 18 _____, to the _____ of _____, 18 _____ inclusive. Land Charges from the _____ of _____, 18 _____, to the _____ of _____, 18 _____ inclusive.]

Surname or Names.	Christian Name or Names.	Address or Addresses.*	Titles, Trades, or Professions.*

* If the person against whom the search is to be made has more than one address, title, trade, or profession, this may be filled up accordingly.

I declare that the above search(es) is (are) required for the purposes of a sale [mortgage, lease, or as the case may be] from _____ to _____.

N.B.—State here whether Certificate to be sent by post or to be kept till called for. Signature, Address, and Description of the Applicant or Solicitor.)

Dated this _____

of _____, 18 _____.

Rule 7.—In any case of modification or cancellation of entries on the register, such evidence in respect thereof as the registrar shall from time to time think necessary shall be required.

Rule 8.—These rules may be cited as “The Land Charges Rules, 1889.”

January 1, 1889.

THE SCHEDULE—FORMS.

FORM I.—APPLICATION TO REGISTER A WRIT OR ORDER.

Register of Writs and Orders.

Land Charges Registration and Searches Act, 1888.

Office of Land Registry.

Filed for registration the _____ day of _____, 18—.	A Writ [or Order] of the _____ Division of the High Court.
By _____	Dated the _____ day of _____, 18—.
of _____	TITLE OF THE ACTION OR MATTER.
(Signed) _____	_____ Plaintiff.
Applicant [or Solicitor].	_____ Defendant.

Name of the Person whose Estate is affected.

Surname.	Christian Name or Names.	Address.	Title, Trade, or Profession.

FORM II.—APPLICATION TO REGISTER A DEED OF ARRANGEMENT.

Register of Deeds of Arrangement.

Land Charges Registration and Searches Act, 1888.

Office of Land Registry.

Filed for registration the _____ day of _____, 18—.	Date of the Deed _____
By _____	
of _____	PARTIES TO THE DEED.*
(Signed) _____	_____
Applicant [or Solicitor].	_____

* Names only; and where the creditors are numerous, enter the names of the first three, adding “and others.”

Name of the Person whose Estate is affected.

Surname.	Christian Name or Names.	Address.	Title, Trade, or Profession.

APPENDIX.

834c

FORM III.

APPLICATION TO REGISTER A LAND CHARGE.

*Register of Land Charges.**Land Charges Registration and Searches Act, 1888.*

Office of Land Registry.

Filed for registration the _____ day of _____, 18—.	A charge upon lands in the parish(es) of _____.
By _____ of _____ (Signed) _____ Applicant [or Solicitor].	Dated the _____ day of _____, 18—. By virtue of the statute _____.

The Person in whose Name the Registration is to be made.

Surname.	Christian Name.	Address.	Title, Trade, or Profession.	Capacity.*

* Here state whether beneficially entitled to the first estate of freehold, or to a lease for lives or life, or for a term of years, or whether tenant on the Court Rolls of the Manor.

FORM IV.

DECLARATION IN SUPPORT OF AN APPLICATION TO REGISTER.

I, _____, of _____, solemnly and sincerely declare that the writ [order, deed, charge], whereof the particulars are set forth in the application for registration thereof, marked "A," and now produced and shown to me, was actually issued [made, executed] at the time and in the manner in the said application mentioned, and that the particulars set forth therein are to the best of my knowledge, information, and belief, true. And I make, &c.

FORM V.

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N.B.—This form may be filled in for a future day not less than three days subsequent to its arrival in the office.

Land Charges Registration and Searches Act, 1888.

Office of Land Registry.

Please search the Register of Writs and Orders for the period of five years ending the _____ of _____, 18 _____ inclusive. [Deeds of Arrangement from the _____ of _____, 18 _____, to the _____ of _____, 18 _____ inclusive. Land Charges from the _____ of _____, 18 _____, to the _____ of _____, 18 _____ inclusive.]

Surname or Names.	Christian Name or Names.	Address or Addresses.*	Titles, Trades, or Professions.*

* If the person against whom the search is to be made has more than one address, title, trade, or profession, this may be filled up accordingly.

I declare that the above search(es) is (are) required for the purposes of a sale [mortgage, lease, or as the case may be] from _____ to _____.

N.B.—State here whether Certificate to be sent by post or to be kept till called for. Signature, Address, and Description of the Applicant or Solicitor.)
Dated this _____ of _____, 18 _____.

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... IN CASE OF FAILURE OF REDEMPTION, AFTER THE EXPIRY OF THE FIRST THREE.

— 100 —

Excerpted

Systemic Infection

the Trade, or Profession

APPENDIX.

884c

FORM III.

APPLICATION TO REGISTER A LAND CHARGE.

*Register of Land Charges.**Land Charges Registration and Searches Act, 1888.*

Office of Land Registry.

led for registration the ———
y of ———, 18—.

By

A charge upon lands in the parish(es)
of ———.

Dated the ——— day of ———, 18—.

(Signed) ———
Applicant [or Solicitor].

By virtue of the statute ———.

The Person in whose Name the Registration is to be made.

Surname.	Christian Name.	Address.	Title, Trade, or Profession.	Capacity.*

* Here state whether beneficially entitled to the first estate of freehold, or to a lease for lives or life, or for a term of years, or whether tenant on the Court Rolls of the Manor.

FORM IV.

DECLARATION IN SUPPORT OF AN APPLICATION TO REGISTER.

I, ———, of ———, solemnly and sincerely declare that the writ [order, deed, charge], whereof the particulars are set forth in the application for registration thereof, marked "A," and now produced and shown to me, was actually issued [made, executed] at the time and in the manner in the said application mentioned, and that the particulars set forth therein are to the best of my knowledge, information, and belief, true.

And I make, &c.

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Application for Official Search.

N.B.—This form may be filled in for a future day not less than three days subsequent to its arrival in the office.

Land Charges Registration and Searches Act, 1888.

Office of Land Registry.

Please search the Register of Writs and Orders for the period of five years ending the ——— of ———, 18 ——— inclusive. [Deeds of Arrangement from the ——— of ———, 18 ———, to the ——— of ———, 18 ——— inclusive. Land Charges from the ——— of ———, 18 ———, to the ——— of ———, 18 ——— inclusive.]

Surname or Names.	Christian Name or Names.	Address or Addresses.*	Titles, Trades, or Professions.*

* If the person

search is to be made has more than one address, title, &c. accordingly.

(are) required for the purposes of
be] from ——— to ———
ss, and }
as Ap- }
st. }

Rule 7.—In any case of multiple entries on the register, such evidence shall from time to time be required.

Rule 8.—These rules may be cited as the "Rules, 1889."

January 1, 1889.

THE SCHEDULE.

FORM I.—APPLICATION TO REGISTER
*Register of Writs and Orders,
 Land Charges Registration and
 Office of Land*

Filed for registration the _____
 day of _____, 18__.

By _____

of _____
 Solicitor _____

Applicant for Solicitor _____

Name of the Person _____

Residence Christian Name _____

FORM II.—APPLICATION TO
*Register of Writs and Orders,
 Land Charges Registration and
 Office of Land*

Filed for registration the _____
 day of _____, 18__.

By _____

Applicant for Solicitor _____

Name of the Person _____

Residence Christian Name _____

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Land Charges Registration and Searches Act, 1888.

Office of Land Registry.

I declare that the search(es) in the name(s) of _____ required by the
 application of _____, dated the _____ of _____, 18____, is (are) required
 for the purposes of a sale [mortgage, lease, or as the case may be]
 from _____ to _____.

Signature and address of applicant or solicitor :
 of _____

Dated this _____ of _____, 18____.

FORM VII.

CERTIFICATE OF OFFICIAL SEARCH.

Land Charges Registration and Searches Act, 1888.

Office of Land Registry.

This is to certify that there are no entries in the Register of Writs and
 Orders for the period of five years ending _____ inclusive [Deeds of
 Arrangementment from _____ to _____ inclusive, Land Charges from
 to _____ inclusive], in the names of _____, except the
 following :—

Dated this _____ of _____, 18____.

Land Registry.
 Search Department.

FORM VIII.

REQUISITION FOR CONTINUATION OF OFFICIAL SEARCH.

Land Charges Registration and Searches Act, 1888.

Office of Land Registry.

Please continue the search(es) in the Register(s) of _____ made pur-
 suant to the requisition dated the _____ of _____, 18____, in the
 name(s) of _____ down to the _____ of _____, 18____ inclusive.

Signature and address of applicant or solicitor :

Dated this _____ of _____, 18____.

N.B.—The certificate of the original search must be forwarded with
 this application.

FORM IX.

CERTIFICATE OF CONTINUATION OF OFFICIAL SEARCH (TO BE INDORSED
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This is to certify that there are no further entries in the register of
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 In the register of _____

Dated this _____ of _____, 18____.

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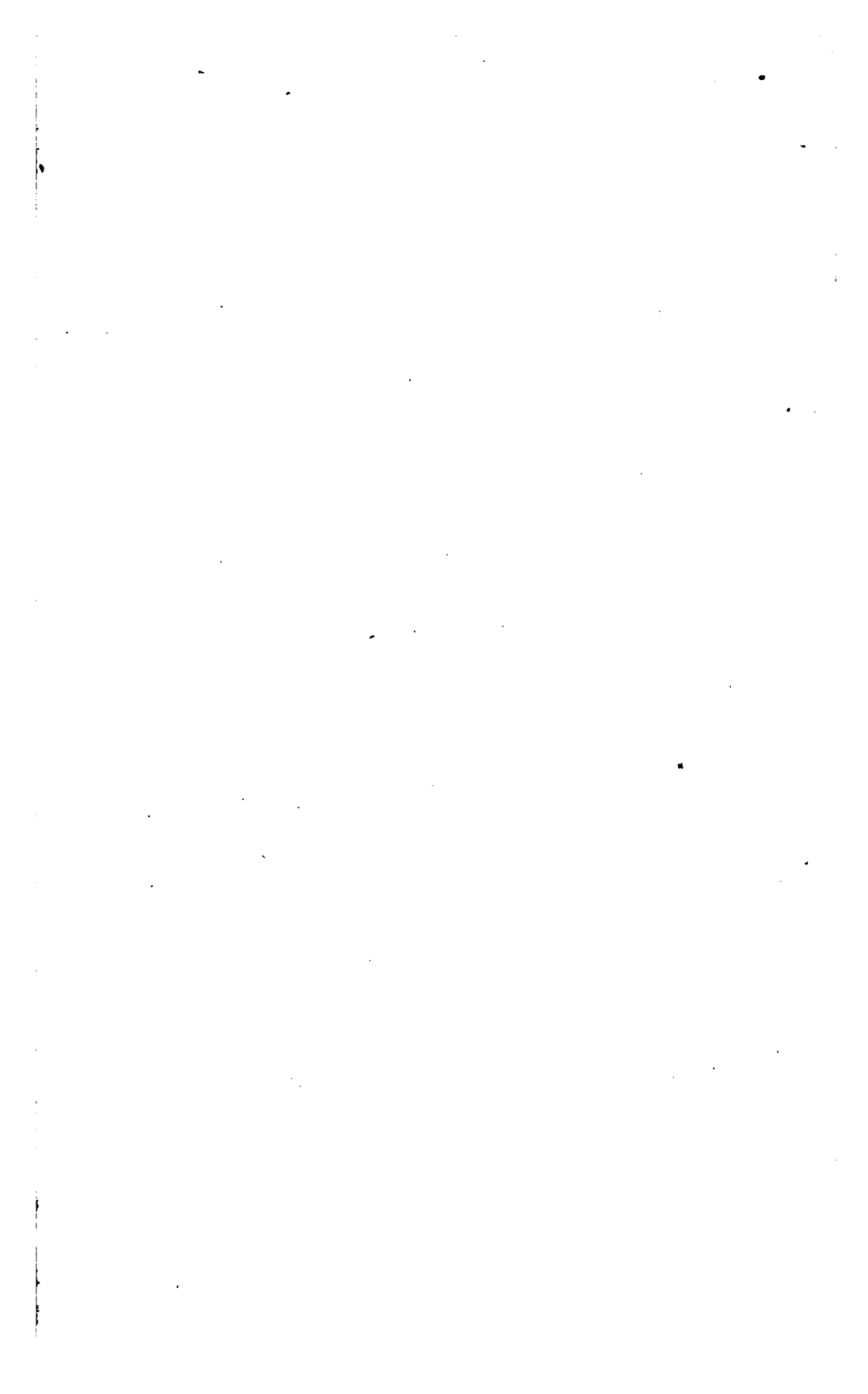
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